

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

BUKOBWA DISTRICT REGISTRY

AT BUKOBWA

MISC. CRIMINAL APPLICATION NO. 33 OF 2022

(Arising from Criminal Case No. 81 of 2021 of Ngara District Court)

MANENO JOHNAPPLICANT

VERSUS

THE REPUBLIC RESPONDENT

RULING

02/12/2022 & 05/12/2022
E. L. NGIGWANA, J.

This is an application for extension of time within which to appeal against the decision of Ngara District Court (E. M. Kavalo – RM) in Criminal Case No. 81 of 2021 handed down on 3rd day August 2021.

The application has been brought by way of Chamber summons made under the provisions of section 361 (2) and 392 (A) of the Criminal Procedure Act, Cap 20. R. E 2022, supported by an affidavit duly sworn by the applicant. No counter affidavit was filed by the respondent/ Republic contesting the application.

A brief background of this matter is to the effect that, the applicant herein was charged the offence of Rape contrary to section 130 (1) (2) and 131 of (1) the Penal Code Cap 16 R.E 2019, Now R.E 2022. It was alleged in the trial court that the applicant on 26th day of January 2021, during day time at Kashinga Village within Ngara District in Kagera Region, did have carnal knowledge of one A.J, a woman aged 21 years old without her consent.

On arraignment, the applicant pleaded not guilty to the charge, the denial which triggered a full trial which involved four (4) witnesses and PF as exhibit on the prosecution side and the applicant as the only witness on the defence side. Ultimately, the trial court was satisfied that the case against the applicant had been proved beyond reasonable doubt. Consequently, the applicant was convicted and sentenced to thirty (30) years imprisonment.

Aggrieved by the conviction and sentence, the applicant filed the Notice of Appeal within ten (10) days as according to section 361 (1) (a) of the Criminal Procedure Act of 20 R: E 2022 no appeal from any finding, sentence or order shall be entertained unless the appellant has given notice of his intention to appeal **within ten days from the date of the finding, sentence or order.**

Though the Notice of Intention was filed within ten days as required by the law, no petition of appeal was filed as per section 361(1) (b) of the CPA, hence this application.

The application was argued orally whereas, the Applicant appeared in person, unrepresented while Mr. Noah Mwakisile learned State Attorney, appeared for the Respondent/Republic.

Submitting in support of the application, the Applicant adopted his affidavit and prayers on the chamber application to form part of his submission. The applicant stated that he was aggrieved by conviction and sentence but he was late to file an appeal on time because right after filing the Notice of intention to appeal, he was transferred from Ngara Prison to Kitengule

Prison. He stressed that he failed to file an appeal to this court owing to reasons that were beyond his control. He concluded his submission urging the court to grant this application

On his side, Mr. Mwakisisile conceded to the applicant's application on the ground that the applicant has advanced sufficient reasons to warrant the grant of the prayer.

Having heard the applicant and Mr. Mwakisisile for the respondent, the issue for determination is whether the applicant has been able to advance sufficient reason(s) for the delay. Section 361 (2) of the Criminal Procedure Act, Cap 20 R.E 2022 provides that;

"The High Court may for good cause, admit an appeal notwithstanding that the period of limitation prescribed in this section has elapsed"

It is a cardinal principle that an application for extension of time is entirely in the discretion of court to grant or refuse extension of time. However, extension of time may only be granted where it has been sufficiently established that the delay was due to sufficient cause

It is not disputed that the applicant in this application is a prisoner therefore; he is not a free agent who can freely make follow-ups on his matter or do what he wants to do without restrictions. In the case of **Kabisa Sabiro and Two others versus Republic**, Criminal Appeal No. 191 of 2010 CAT (Unreported), it was held that;

"The appellants being in prison, it is to be expected that every action they take has to be through those under whose authority they are"

The Court of Appeal further held in case of **Shija Marko versus Republic**, Criminal Appeal No.246 of 2018 CAT (Unreported) that;

"Transfer of a prisoner from one prison to another has been considered by the Court to be a reason for constituting good cause for extension of time".

See also **Renatus Muhanje versus Republic**, Criminal Appeal No.417 of 2016 and **Mwita Mataluma Ibaso versus Republic**, Criminal Appeal No.06 of 2013 CAT (Both unreported) .In the matter at hand, the applicant was transferred from Ngara Prison to Kitangule prison and ultimately found himself out time

Being guided by the herein above cited authorities, I shake hands with the learned State Attorney for the Republic that the applicant has managed to demonstrate sufficient cause for the delay since it is apparent that the reasons for the delay were beyond his control.

In the event, I allow the application. The applicant is given a period Twenty one (21) days within which to file the petition of appeal to this Court to challenge the decision of Ngara District Court in Criminal Case No. 81 of 2021 handed down on 03/08/2021. It is so ordered.

Dated at Bukoba this 5th day of December, 2022.



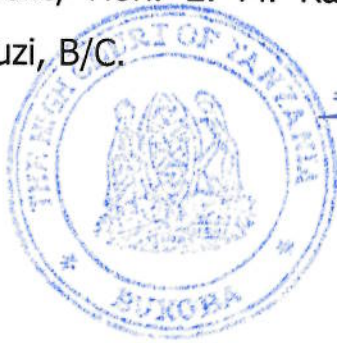
E.L. NGIGWANA

JUDGE

21/12/2022.

Ruling delivered this 5th day of December, 2022, in the presence of the Applicant in person, Mr. Amani Kilua, learned State Attorney for the

Republic, Hon. E. M. Kamaleki, Judges' Law Assistant, and Ms. Lonsia Kyaruzi, B/C.



E.L. NGIGWANA

JUDGE

05/12/2022