

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**BUKOB A DISTRICT REGISTRY**

**AT BUKOB A**

**MISC. CRIMINAL APPLICATION NO. 47 OF 2021**

*(Arising from RM Criminal Case No.12 of 2019 of Resident Magistrates' Court of Bukoba at Bukoba)*

**LAURENT BALTAZAR .....APPLICANT**

**VERSUS**

**REPUBLIC ..... RESPONDENT**

**RULING**

28/03/2022 & 01/04/2022

**NGIGWANA, J.**

This is an application for extension of time within which to lodge a notice of appeal and an appeal out of time against the decision of the Resident Magistrates' Court of Bukoba (Kaijage -RM) in RM Criminal Case No. 12 of 2019 handed down on 20/05/2019.

The application is brought by way of Chamber summons made under the provisions of Section 361 (2) of the Criminal Procedure Act, Cap 20 R: E 2019 and supported by an affidavit deposed by the applicant. The application is not opposed by the respondent Republic.

A brief background of this matter is to the effect that, the applicant was charged and convicted for the offence of Incest by Male contrary to section 158 (1) (a) of the Penal Code Cap 16 R: E 2021. It was alleged that the applicant on 9<sup>th</sup> day of January 2019 during night hours at Bwendangabo Village, Bugabo area within Bukoba Rural in Kagera Region, did have prohibited sexual intercourse with his daughter aged 13 years old.

When the charge read and explained to the applicant, he pleaded not guilty. The prosecution side paraded three witnesses and tendered on exhibit to wit; PF3. The applicants side featured three witnesses, that is to say; the applicant and his two witnesses. After full trial, the court was satisfied that the case against the applicant was proved beyond reasonable doubt, therefore, he was convicted and sentenced to serve a term of thirty (30) years in jail.

The applicant was aggrieved by the decision of the trial court; however, he filed no notice of appeal and appeal within the prescribed time hence this application.

When the application came for hearing, the applicant who stood unrepresented urged the court to adopt his affidavit as part of his submission and grant the reliefs sought. Ms. Veronica Moshi, learned State Attorney appeared for the Republic/Respondent. When invited to take the floor, Ms. Veronica submitted that, having gone through the chamber summons and supporting affidavit, she found that the applicant has managed to demonstrate sufficient cause to warrant this court to exercise its discretionary powers to grant extension of time.

Having heard both parties, the issue for determination is whether the applicant has been able to advance sufficient reason for the delay. It is a cardinal principle that where extension of time is sought, the applicant will be granted upon demonstrating sufficient cause for the delay.

Conversely, it is also well settled that the sufficient cause depends on deliberation of various factors, some of which revolve around the nature of actions taken by the applicant immediately before or after becoming aware that the delay is imminent or might occur. See decisions in the case of **Regional Manager Tan roads Kagera versus Rinaha Concrete Co. Ltd; Civil**

**Application No. 96 of 2007 CAT, unreported and Godwin Ndeweri and Karoli Ishengoma versus Tanzania Indil Corporation (1995) TLR 200 and Republic versus Yona Kaponda and 9 others (1985) TLR 84.**

The applicant through his averment in paragraphs 2 of the affidavit has advanced the reason for the delay being that, he prepared and signed his petition of appeal in time through Prison Officer who had the duty to forward the same to the High Court Registry, but the officer delayed to file the same, as he filed it on 12/06/2020, that is to say 5days after the expiry of the mandatory prescribed time of ten days from the date of the decision/judgment, and that omission was out of his control.

As already pointed out Ms. Veronica Moshi, learned State Attorney, the Respondent had no objection to the application by the applicant since the applicant has advanced sufficient reason to warrant the grant of the prayer.

Though this application by the applicant is not supported by the supplementary affidavit of the Officer In charge of Bukoba Prison, I am of the strong the view that the omission has not affected the applicant's application. It also be noted that the applicant lodged appeal No. 37 2021 but the same was struck out on 11<sup>th</sup> day of August, 2021 for want of valid notice of his intention to appeal, whereas, on 24<sup>th</sup> day of August 2021, the present appeal was filed, the applicant therefore was not negligent, he acted promptly.

With that view, I find that the applicant has advanced good cause for the failure to file the notice within ten (10) days and an appeal within prescribed period of time. For that reason, I allow the application. The applicant is given a period of ten (10) days from the date of this ruling, within which to file the notice of

intention to appeal, as well Thirty (30) days within which to file petition of appeal to this court.

It is so ordered



E.L. NGIGWANA

JUDGE

01/04/2022

Ruling delivered this 1<sup>st</sup> day of April, 2022 in the presence of the applicant in presence, Ms. Veronica Moshi, learned State Attorney for the Republic/ Respondent, Mr. E. M. Kamaleki, Judges' Law Assistant and Ms. Tumaini Hamidu, B/C.



E.L. NGIGWANA

JUDGE

01/04/2022