

THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

MBEYA DISTRICT REGISTRY

AT MBEYA

MISC. CRIMINAL APPLICATION NO. 4 OF 2023

(Originating from the Criminal Case No. 256 of 2020 of the Resident Magistrate Court of Mbeya)

Between

OSCAR AFWILILE APPLICANT

VERSUS

THE REPUBLIC RESPONDENT


RULING

Date of last order: 13th March, 2023

Date of ruling: 14th March, 2023

NGUNYALE, J.

By way of chamber summons made under section 361(2) of the Criminal Procedure Act [Cap 20 R: E 2022] "the CPA", the applicant has applied for extension of time in Criminal Case No. 256 of 2020 of the Resident Magistrate Court of Mbeya for giving notice of appeal and filing petition of appeal to this court. The application is supported by an affidavit deposed by the applicant. It is noteworthy that the respondent elected



to file no counter affidavit which essentially implies that the averments in the supporting affidavit are uncontested.

When the application was called on for hearing the applicant appeared in person unrepresented whereas the respondent Republic was represented by Mwajabu Tengeneza, Senior State Attorney. The application proceeded orally.

When the applicant was given chance to submit had nothing to add from what he pleaded in the affidavit, he just prayed the application to be granted.

The respondent on their side had no any objection to the applicant's prayer.

Having considered the submissions by the parties and after examining the application record, I am of a settled mind that the only issue calling for my determination is, whether the applicant has managed to show sufficient cause warranting the extension of time he has sought. The starting point is section 361(2) of the CPA 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 to be noted that, there is no universal definition of what constitute good reasons. The good reasons have not been defined by the law; it all depends on circumstance of the case. From the affidavit the main reason



advanced by the applicant is that after conviction he submitted the notice of intention to appeal to the prison office for transmission to the court. After being supplied with proceeding when he wanted to file his petition of appeal, he could not trace the notice neither at prison nor in the court registry. In the case of **Kabisa Sabiro and Two Others vs Republic**, Criminal Appeal No. 191 of 2010 (unreported) in which the Court was faced with a similar scenario, it was stated that the applicant being in prison, it is to be expected that every action they take has to be through those under whose authority they are. Section 363 of the CPA states;

'Where the appellant is in prison, he may present his petition of appeal and the copies accompanying the same to the officer in charge of the prison, who shall thereupon forward the petition and copies to the Registrar of the High Court.'

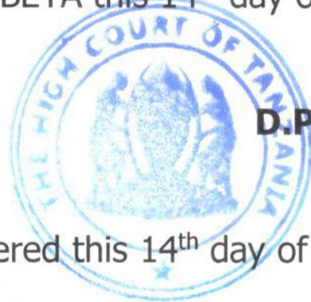
In this matter the appellant failure to file notice of appeal is attributed to the prisoner officer to whom he submitted his notice of intention to appeal for transmission to the court. The averment is reflected in the affidavit and supported by the respondent Republic. From the above I find no reason to disbelieve what the applicant has stated in his affidavit.

In the prevailing circumstances of the case and for the above reasons, I am satisfied that the reasons for the delay as put forward by the applicant in support of his application constitute sufficient reasons and the



application is allowed. The applicant through the prison authorities, should give the notice of his intention to appeal within ten (10) days from the date of the delivery of this ruling. Thereafter should lodge the appeal within forty-five (45) days from the date he receives the documents.

DATED at MBEYA this 14th day of March, 2023




D.P. Ngunyale
Judge

Ruling delivered this 14th day of March 2023 in presence of the applicant in person and the respondent represented by Elibariki Charles learned State Attorney.




D.P. Ngunyale
Judge