

**THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
(DISTRICT REGISTRY OF MOROGORO)
AT MOROGORO**

MISC.CRIMINAL APPLICATION NO. 28 OF 2022

(Originating from criminal case No. 26 of 2019 in the District Court of Mvomero)

ALLY ATHUMAN @ MENGI APPLICANT

VERSUS

THE REPUBLIC..... RESPONDENT

RULING

Hearing date on: 15/03/2023

Ruling date on: 17/03/2023

NGWEMBE, J:

The applicant Ally Athuman @ Mengi found himself jailed for offences of grave sexual abuse contrary to section 138C (1) (a) and (2) (b) of Penal Code. At the time he wakeup with an intent to appeal to this house of justice, alas he was already out of time, hence came to this court seeking extension of time to actualize his intention to appeal.

On the hearing date of this application, the Republic was represented by learned state Attorney Edgar Bantulaki, who categorically conceded to the application and prayed same be granted. Equally the applicant being unrepresented, had nothing useful to address this court, rather prayed his application be considered and extension of time be granted.

Repeatedly, extension of time is within the domain of this court upon being satisfied that, the delay was caused by sufficient cause. Unfortunate, the applicant did not attach any document in his affidavit, that is, neither copy of judgement nor proceedings of the trial court. Thus, this court have no advantage to know exactly when the impugned judgement was delivered by the trial court.

Perusing the attached affidavit to the chamber summons, paragraph 3 indicates that upon being sentenced to jail the applicant was not supplied copies of judgement and proceedings of the trial court until when the time due for appeal lapsed. Basically, that is the reason for delay.

Notwithstanding the above facts, yet it is undisputed fact that, the applicant is still serving his sentence in jail, where freedom of movement is restricted. He could not move to the court to file his petition of appeal freely. More so he could not do so in the absence of copies of judgement and proceedings. This position is not new, there are several precedents to such effect including in the case of **Criminal Application No. 2 of 2007 between Manoma Malolela & 2 Others Vs. R**, and in **Criminal Appeal No. 107 of 2006 between Sospeter Lulenga Vs. R**, in both cases the Court of Appeal held: -

"Having so expressed his intention to appeal, the appellant left the matter in the hands of the prison officer who was duty bound to transmit the Notice of Appeal to the High Court. The default of the prison officer to forward the Notice of Appeal to

the High Court is sufficient ground for extending the period of appeal"

This court cannot point fingers to the applicant for such delay, while in fact, he was constrained to exercise his right of appeal due to delay of supply of copies of judgement and proceedings. Moreover, in the application it is clear the applicant is imprisoned and had no freedom of movement to make close follow up of those copies. In paragraph 4 of his affidavit, it is clear as well that Prison officers tried to make follow up for those copies of judgement and proceedings but in vain.

Therefore, I find merits to this application, accordingly I proceed to invoke my discretionary powers to grant extension of time. Thus, the applicant may actualize his intention to appeal to this court by filing his notice of appeal within ten (10) days from the date of this ruling and thereafter file his appeal within 20 days from the last date of filing notice of appeal.

Order accordingly.

Dated at Morogoro this 17th March, 2023



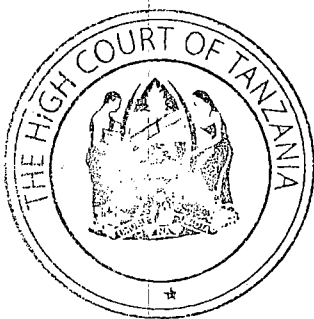
P. J. NGWEMBE

JUDGE

17/3/2023

Court: Ruling delivered in chambers this 17th day of March, 2023 in the presence of the applicant and Rose Makupa, State Attorney for the respondent/ Republic.

Right of appeal to the Court of Appeal explained.



A handwritten signature in black ink, appearing to be "P. J. Ngwembe", is written over a horizontal line.

P. J. NGWEMBE

JUDGE

17/03/2023

ORIGINAL