

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(MOROGORO SUB-REGISTRY)
AT MOROGORO**

MISC. CRIMINAL APPLICATION NO. 48 OF 2023

*(Arising from the decision of the Kilombero District Court, at ifakara via Criminal
Case No. 221 of 2019)*

BETWEEN

JUMA NKWABI LUZINGA APPLICANT

VERSUS

THE REPUBLIC RESPONDENT

RULING

27th April, 2023

CHABA, J.

By way of chamber summons made under section 361 (1) (a) (b) and (2) of the Criminal Procedure Act [Cap. 20 R. E, 2019], now [R. E, 2022] (the CPA), the applicant, Juma Nkwabi Luzinga applies for enlargement of time within which to lodge his petition of appeal before this Court out of time. The applicant also prays for any other Order (s) / relief (s) this Court may deem fit and just to grant.

The application is supported by an affidavit sworn by the applicant himself. Initially, Mr. Shaban Abdallah Kabelwa, learned State Attorney who appeared for the Respondent / Republic, did not oppose the application.



As background, and according to the particulars of offence, it was alleged by the prosecution side that on between unknown date, day of January, 2019 and 27th day of July, 2019 at unknown time at Mbasia area, Ifakara within the District of Kilombero District in Morogoro Region, the accused, Juma Nkwabi Luziga did have carnally knowledge with one R d/o M (Her name withheld), a girl aged six (6) years old against the order of nature.

After a full trial, the appellant was convicted and sentenced to serve thirty (30) years imprisonment. Discontented with the trial court decision, the appellant preferred the present appeal before this court intending to challenge both conviction and sentence. The Respondent / Republic was represented by Mr. Shaban Abdallah Kabelwa, learned State Attorney and the applicant appeared in person, unrepresented.

At the hearing of the application, the Respondent / Republic was represented by Mr. Shaban Abdallah Kabelwa, learned State Attorney while the applicant appeared in person, unrepresented.

As indicated above, the Respondent/Republic did not resist the application. I have impassively gone through the applicant's affidavit and learnt that upon being convicted and sentenced to third (30) years imprisonment on 1st April, 2021 he filed the notice of intention to appeal within ten (10) days as prescribed by the law. That, the copies of judgment and trial Court proceedings were sent to Mahenge Farm Prisons but at the material time had already been transferred Idete Farm Prisons and later was transferred to Kiberege Prisons.



Thus, when the documents were supplied to him while at Kiberege Prisons, he began to look for a legal trained mind person to assist him preparing the petition of appeal but in vain. According to him, instead thereof he was assisted by the Prisons Authority, but the time to lodge the said petition of appeal had already expired. That is why this Court (Chaba, J.) dismissed the applicant's petition of appeal (Criminal Appeal No. 19 of 2022) on 1st December, 2022 on the ground of being incompetent.

As hinted above, I have anxiously considered the application in line with the reasons for delay registered by the applicant. It is trite law that, the High Court may, for good cause, admit an appeal notwithstanding that the period of limitation prescribed by the law has elapsed as provided under section 361 (2) of the Criminal Procedure Act [Cap. 20 R. E, 2022] (the CPA).

In this regard, this Court has discretionary power to extend time for the applicant to file the notice of intention to appeal, but upon good cause being shown. **(See: Mumello Vs. Bank of Tanzania (Civil Appeal 12 of 2002) [2006] TZCA 12 (12 October 2006); Media neutral citation [2006] TZCA 12 and Jaluma General Suppliers Ltd Vs. Stanbic Bank T. Ltd (Civil Appeal 34 of 2010) [2011] TZCA 123 (01 February 2011); Media neutral citation [2011] TZCA 123,** both extracted from (tanzlii.org.tz.).

Reading from the contents of the applicant's affidavit, the applicant is blaming the Prisons Authority as the main source of delay for lodging his petition of appeal following his transfers from Mahenge to Kiberege Prisons. It is trite

law that an application for extension of time is entirely in the discretion of the Court to grant or refuse it, and that extension of time may only be granted where it has been sufficiently established that the delay was with sufficient cause. On scrutiny of the whole application, it is my holding that the applicant has succeeded to convince this Court that, the delay in lodging the petition of appeal was caused by genuine reasons that fall in the realm of sufficient cause, hence this Court has no reason(s) to deny the applicant's application.

In the circumstance, I am inclined to allow the application and grant the prayers sought by the applicant. I thus, hereby enlarge the time within which the applicant may file the notice of intention to appeal before this Court within ten (15) days from the date of this ruling and the intended appeal shall be lodged in Court within thirty (30) days from today on the 27th day of April, 2023.

Order accordingly.

DATED at MOROGORO this 27th day of April, 2023.



M. J. CHABA

JUDGE

27/04/2023

Court:

Ruling delivered under my hand and Seal of the Court in Chambers this 28th day of April, 2023 in the presence of Mr. Shaban Abdallah Kabelwa, learned State Attorney who entered appearance for the Respondent / Republic and the Applicant who appeared in person, unrepresented.



M. J. CHABA

JUDGE

27/04/2023

Court:

Rights of the parties fully explained.



M. J. CHABA

JUDGE

27/04/2023