

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF TABORA

AT TABORA

MISC. CRIMINAL APPLICATION NO. 25 OF 2023

*(Originating from Criminal Case No. 38 of 2021 of the District Court of
Tabora)*

HAMAD S/O ABDUL @ SAID.....APPLICANT

VERSUS

THE REPUBLIC..... RESPONDENT

RULING

Date of Last Order: 09/08/2023

Date of Delivery: 09/08/2023

MATUMA, J.

The applicant **Hamad s/o Abdul @ Said** has filed this application for extension time so as to lodge notice and petition of appeal out of time against the decision of the District Court of Tabora in Criminal Case No. 38 of 2021 in which he was convicted and sentenced for rape.

The application is made under section 361(2) of the Criminal Procedure Act, Cap 20 R.E 2019, and section 14 of the Law of Limitation Act, Cap 89 R.E 2019.

At the hearing of the application, the applicant appeared in person while the respondent was represented by Mr. Robert Kumwembe learned State Attorney.

The applicant had nothing more than adopting the contents of his affidavit as his submission. In his affidavit, he stated that the impugned judgment was delivered on 14/06/2022 and on 20/06/2022 he submitted his notice of appeal to the trial Court as required by law. However, he was delayed to receive the copies of the judgment and proceedings which were the necessary materials for him to process his appeal. He received the same on 06/12/2022 and immediately on 08/12/2022 he prepared his petition of appeal which was registered online on 28/12/2022.

The applicant further stated that he was never summoned to appear before the High Court for long time until when he complained to the admission officer of Uyui Central Prison about the fate of his appeal. The prison authority made follow up and informed him that his petition of appeal was not registered as it was time-barred. He was then advised that the only remedy was to apply for an extension of time so that he can file a fresh petition of appeal hence the instant application.

Mr. Robert Kumwembe learned State Attorney did not object the application and had in fact not filed the counter affidavit.

After having heard both parties, it is a guiding principle that in an application of this nature the applicant is required to account for each day of delay. See; ***Saidi Ambunda vs Tanzania Harbours Authority, Civil Application No. 177 of 2004*** and ***Lyamuya Construction Co. Ltd v. Registered Trustees of Young Women's Christian Association of Tanzania, Civil Application No. 2 of 2010.***

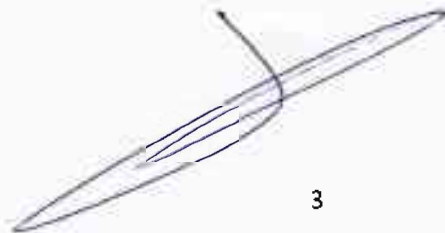
In order to justify his delay, the applicant submitted in his affidavit that he delayed to receive copies of the judgement and proceedings so as to prepare his appeal and that after completing the preparations and

registering his appeal online, he stayed long until when he discovered that the same was not admitted for being time barred.

The applicant being a prisoner, his rights and responsibilities are restricted, he therefore depended much on the prison authority to receive copies of judgment and proceedings and also to prepare and of lodge the respective appeal before this Court. In that case, the applicant cannot be blamed for the delay of lodging his appeal, as it may sometimes be unfair to expect too much from him.

The Court of Appeal has in various decisions considered the situation of prisoners that they are not free agents who can freely lodge matters before the Court and make regular follow-ups on them and thus, granted applications for extension of time. See; the cases of ***Otieno Obute v. The Republic Criminal Application No. 1 of 2011*** CAT at Mwanza (unreported) and ***Joshua Malendeja vs Republic (Criminal Application 67 of 2017) [2020] TZCA 341 (23 April 2020)***.

In this case the applicant made all the requisite efforts to have his appeal lodged in time but found himself out of time for matters beyond his control. I have seen even his notice of appeal which was lodged in time and still valid up to date. The Respondent did not file counter affidavit and in fact supported this application. In the circumstances, I find that the application has merit. I extend time for the applicant to lodge his petition of appeal out of time. His notice of appeal is still valid as it was lodged in time. The said appeal should be lodged within thirty (30) days from the date of this ruling.



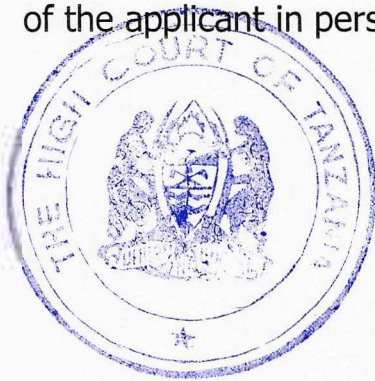
It is so ordered.




MATUMA
JUDGE
09/08/2023

COURT:

Ruling delivered in chambers in the presence of Mr. Robert Kumwembe learned State Attorney for the Republic and in the presence of the applicant in person. Right of appeal explained.




MATUMA
JUDGE
09/08/2023