

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

*Miscellaneous Criminal Application No. 18 of 2023  
(Originating from Tabora District Court in Criminal Case No. 48 of 2021)*

**KULWA PAULO @ CHAKONKO ..... APPLICANT  
VERSUS  
THE REPUBLIC ..... RESPONDENT**

**RULING**

*Date of Last Order: 10/7/2023*

*Date of Ruling: 28/7/2023*

**KADILU, J.**

The applicant herein named Kulwa Paulo @ Chakonko was charged and convicted for the offence of rape contrary to sections 130 (1), (2) (e), 131 (1) and (3) of the Penal Code, [Cap. 16 R.E. 2019]. After a full trial, he was convicted and sentenced to serve life imprisonment by Tabora District Court. Aggrieved with the decision, he wished to appeal to the High Court, but he found the prescribed time to lodge notice and petition of appeal had lapsed. He decided to file this application in which he has moved this Court by way of chamber summons supported by an affidavit. He is praying the Court to grant him an extension of time to lodge both notice of intention to appeal and petition of appeal.

In the supporting affidavit, the applicant raised three grounds upon which he prays consideration of this Court to grant him an extension of time:

- 1. That, on 08/12/2022 and 28/12/2022 he filed notice and petition of appeal through online method but from that time, he never received summons to appear to prosecute his appeal. After an*

*inquiry he was informed that his appeal was not received by the court.*

- 2. That, the conviction was entered against the weight of evidence adduced.*
- 3. That, there is a point of law involved in the decision sought to be appealed against, which he considered of sufficient importance with overwhelming chances of success.*

When the application was called for hearing, the applicant appeared in person unrepresented whereas the Republic was represented by Ms. Aziza Mfinanga, Ms. Joyce Nkwabi, and Ms. Suzan Barnabas, learned State Attorneys. Ms. Aziza submitted that the applicant was supposed to file a petition of appeal within 45 days from 6/10/2022 which is the day the applicant received certified copies of judgment. She further submitted that the applicant asserts that he filed a petition of appeal online on 28/12/2022, but there is no proof. She cited the case of ***Maulid Swedi vs Republic***, Criminal Application No. 66 of 2017, TZCA 344.

On the other hand, the applicant submitted that he was not responsible to ensure that the online petition of appeal was registered in time, it is the duty of the prison administration. Reading from the contents of the applicant's affidavit, the applicant is blaming the technological advancements coupled with unforeseen hardships. According to him, the introduction of electronic filing of cases came with its hardship, especially for those who are far bridged by the digital world like the convicts in prisons.

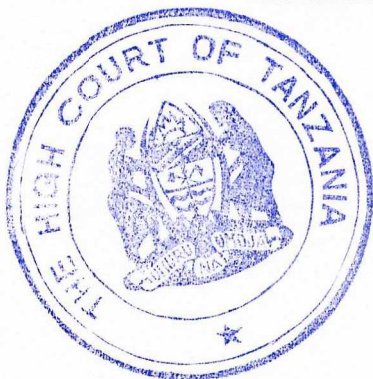
The applicant in this application informed this court that on the quest to challenge the decision of the trial Court, he filed an appeal in

time through an online portal but he never received a call back from this Court which is why he ended up finishing the prescribed appeal time before the same could be accepted to the digital systems. Anyone who entered this technological trap as the applicant did, has no other way to get out of it than to bring an application of this kind.

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 due to good and 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 notice and 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 prayers.

For the stated reasons, I am inclined to allow the application and grant the prayers sought by the applicant. I thus, enlarge the time within which the applicant may file the notice of intention to appeal before this Court within ten (10) days from the date of this ruling and the intended appeal shall be lodged in Court within thirty (30) days, also from the date of this ruling.

**It is so decided.**



  
**KADILU, M.J.**

**JUDGE**

**28/07/2023.**

Ruling delivered in chamber on the 28<sup>th</sup> Day of July, 2023 in the presence of Ms. Aneth Makunja and Ms. Aziza Mfinanga, State Attorneys for the Respondent.



**J. MDOE**

**AG. DEPUTY REGISTRAR**

**28/07/2023.**

