

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

*Miscellaneous Criminal Application No. 14 of 2023
(Originating from Tabora District Court in Criminal Case No. 63 of 2021)*

**YOHANA DAUD.....APPLICANT
VERSUS
THE REPUBLIC.....RESPONDENT**

RULING

*Date of Last Order: 10/7/2023
Date of Ruling: 28/7/2023*

KADILU, J.

By way of chamber summons made under section 361 (2) of the Criminal Procedure Act [Cap. 20 R.E. 2019], the applicant has applied for an enlargement of time within which to lodge both the notice and petition of appeal before this Court out of time. He also prays for any other orders or reliefs this Court may deem fit and just to grant. The application is supported by an affidavit sworn by the applicant. During the hearing, the respondent Republic was represented by Ms. Joyce Nkwabi, the learned State Attorney who opposed the application while the applicant appeared in person, unrepresented.

As background and according to the particulars of offence, it was alleged by the prosecution that on 6th day of August, 2021 at Kakulungu Area, Uyui Ward within Tabora Municipal in Tabora region, the accused did have carnal knowledge with one PY (Her name withheld) a girl aged fourteen years old. After the trial, the appellant was convicted and sentenced to serve thirty (30) years imprisonment. Discontented with the

trial court's decision, the appellant preferred the present appeal before this court challenging both conviction and sentence.

I have gone through the applicant's affidavit and observed that upon being convicted and sentenced to third (30) years imprisonment on 6th September 2022 he filed the notice of intention to appeal within ten (10) days prescribed by the law. He received the copies of judgment and trial court's proceedings on 6/12/2022 to be able to prepare his appeal which he did on the same day. On 28/12/2022, he filed a notice and petition of appeal through online system but since then, he did not receive summons to appear to prosecute his appeal.

The applicant asserts that there is a point of law involved in the decision sought to be appealed against, which he considers of sufficient importance with overwhelming chances of success. He contends further that the conviction was entered against the weight of evidence adduced. As hinted above, I have considered the application in line with the reasons for the delay as submitted 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].

In this regard, this Court has discretionary power to extend the time for the applicant to file notice of intention to appeal and petition of appeal after having shown good and sufficient cause for the delay. (***See Mumello vs. Bank of Tanzania, Civil Appeal No. 12 of 2002, Court of Appeal of Tanzania at Dar es Salaam and Jaluma General Suppliers Ltd vs. Stanbic Bank T. Ltd, Civil Appeal No. 34 of 2010.***)

Reading from the contents of the applicant's affidavit, the applicant is blaming the technological advancements which came with unforeseen hardships. He stated that the introduction of electronic filing of cases in Tanzania came with its hardship especially for those who are far bridged by the digital world like the convicts who are in prisons. The applicant informed the 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 system.

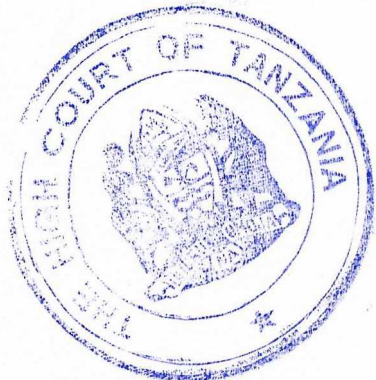
It is my considered view that anyone who was trapped by this technological trick as the applicant did, has no other way to get out of it than to bring an application of this kind. It is trite law that an application for an extension of time is entirely in the discretion of the court to grant or refuse it and that, extension of time may only be granted where it has been sufficiently established that the delay was caused by good and sufficient reason.

After 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 the court has no reason to deny the applicant's application. In this circumstance, 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 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 28th Day of July, 2023 in the presence of Ms. Aneth Makunja and Ms. Aziza Mfinanga, State Attorneys for the Respondent and Mr. Yohana Daudi, the applicant present in person.



J. MDOE

AG. DEPUTY REGISTRAR

28/07/2023.

