

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

CRIMINAL REVISION NO. 6 OF 2023

(Originating from Nzega District Court Criminal Case No. 53 of 2017)

KULWA CHARLES @ SHIJA.....APPLICANT

VERSUS

THE REPUBLIC.....RESPONDENT

RULING

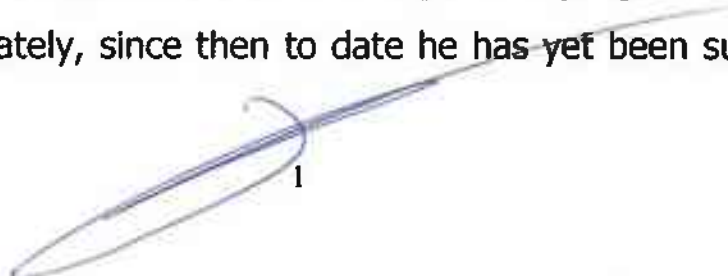
Date of Last Order: 08/09/2023

Date of Ruling: 05/10/2023

MATUMA, J

This Revision proceedings were initiated by the Court suo moto after receiving a complaint letter from the applicant who is incarcerated into Uyui Prison for about six years now. He is in the said prison serving an imprisonment term of thirty years for the offence of Rape the offence of which he was convicted and sentenced on the 27th October, 2017.

The brief background leading to this Revision proceedings is that; the applicant having been convicted and sentenced was aggrieved and intended to appeal. He thus applied for proceedings and judgment for appeal purposes. Unfortunately, since then to date he has yet been supplied with



1

those necessary documents so that he could process his appeal. He made several reminders so that he is supplied with such documents but all ended in vain.

On 18/8/2023, the applicant decided to write the complaint letter to the Judge in charge to have the fate of his intention to appeal determined and subsequently be heard on appeal against his conviction and sentence.

The Deputy Registrar through correspondences in the complaint register informed the honourable Judge in charge that the original records are nowhere to be found and that she has made all the necessary steps to find the whereabouts of the case file but could not find it.

The Honourable Judge in charge having been satisfied that the original records are nowhere to be seen, directed the opening of this revision proceedings so that the parties are summoned to address on the issue.

At the hearing of this Revision the applicant was present in person while the respondent was represented by Aneth Makunja learned State Attorney.

The applicant on his part had nothing to explain but lamented that his right to appeal has been blocked for he has not been given the necessary documents that could assist him to appeal. Having been informed that the original records are nowhere to be seen, he prayed to be released. His submission was very short and just to quote, he submitted;

"I want to appeal but I have no judgment and proceedings of the trial court. I am stranded as to my fate. I pray to be discharged"

The learned State Attorney on her part submitted that in the circumstances that the records are nowhere to be found, and taking into

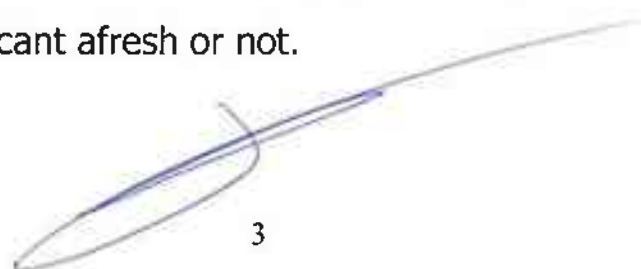
consideration the period which the Applicant has been in custody, this court may determine the matter on the manner it will deem fit for the interest of justice.

In the circumstances of the historical background of the matter supra and the submissions made by the parties, I am inclined to agree with the learned State Attorney that an appropriate order that would meet the end of justice be issued. This is because justice should not be circumvented merely because the records of the lower court are nowhere to be seen. In the case of ***Yusuph S/O Mbululo Versus The Republic, Criminal Appeal No. 405 of 2018*** the Court of Appeal at Songea on a matter with similar circumstances to the instant one quashed the unfound proceedings, judgment and set aside the sentence meted against Yusuph Mbululo after it was realised that a reconstruction of the records was not possible. Since the said Yusuph Mbululo had already served almost twenty-three years in prison out of the death sentence, the Court of Appeal ordered his release from custody.

The Court of Appeal had however on other situations where the appellant or applicant has served only a short period in prison out of the sentence he was ordered to serve, ordered a retrial.

In the instant matter the applicant has served six years and two months out of thirty years imprisonment term meted against him.

In this regard, I order the release of the Applicant from custody but allow the Director of Public Prosecutions to exercise his discretion whether to re-charge the Applicant afresh or not.



3

I therefore quash the proceedings and judgment of the lower court and subsequently thereof set aside the sentence of thirty years meted against the applicant.

I order his immediate release from custody unless otherwise held for some other lawful course. The Director of Public Prosecutions is at liberty to commence afresh the prosecution against the applicant on the same facts. In case of the re-prosecution and a new conviction, the period which the applicant has already served in prison shall be counted for in the new sentence.

It is so ordered.



**MATUMA
JUDGE**

05/10/2023

Court; Judgement delivered in chambers in the presence of the applicant in person and in the presence of M/S Ida Rugakingira, learned State Attorney for the Republic/Respondent.



**MATUMA
JUDGE**

05/10/2023