

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

AT TABORA

MISC. CRIMINAL APPLICATION NO. 23 OF 2023

(From the Decision of the District Court of Urambo in Criminal Case No. 27 of 2022)

FARES S/O ALEX @ ASAFU APPLICANT

VERSUS

THE REPUBLIC..... RESPONDENT

RULING

Date of Last Order: 02/10/2023

Date of Ruling: 13/10/2023

KADILU, J.

This is a ruling on application for leave to file notice and petition of appeal out of time. The application is filed 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]. It is supported by an affidavit of the applicant. The applicant's grounds for application are **firstly** that, in Urambo District Court, he was convicted for the offence of statutory rape contrary to Sections 130 (1), (2) (e), 131 (1) of the Penal Code, [Cap. 16 R.E. 2019]. After a full trial, he was sentenced to serve thirty (30) years imprisonment.

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. **Secondly**, judgment of the trial court was delivered on 27/10/2022 and he was required to file the notice of appeal within ten days and petition of appeal within forty-five days. **Thirdly**, on 04/11/2022, he gave the notice of appeal to the trial court as required by the law and on 06/12/2022, he

received appeal materials from the trial court. On 19/12/2022, he prepared his appeal which was registered online on 28/12/2022.

Fourth, from that time until the date he lodged this application, he was not summoned to this court to prosecute his appeal. Upon follow-up from admission office of Uyui Prison where he is serving his jail term, he was informed that his appeal could not be registered on account of being time-barred. He was informed by the Admission Officer that the only remedy which he had was to file an application for extension of time. Therefore, he filed this application on 26/06/2023 seeking leave of the court to file notice and petition of appeal out of time.

When the application was called for hearing, the applicant appeared in person without legal representation while the respondent was represented by Ms. Suzan Barnabas and Mr. Steven Mnzava, both the learned State Attorneys. The applicant had nothing to submit concerning his grounds for application. He only urged the court to grant his application. Mr. Steven informed the court that the respondent Republic does not oppose the application due to the fact that the applicant being a prisoner, is not an independent agent who would make follow-up of this application before the court. He added that the applicant has managed to show diligence and a good cause for the delay.

He referred to Lyamuya's case and the case of *Maulid Swedi v R.*, Criminal Application No. 66 of 2017. The learned State Attorney prayed

to withdraw a counter affidavit which was filed earlier by the respondent in opposition of the application. Following that concession by the respondent, the point for determination by this court is whether the application is meritorious or otherwise. It is a trite law that the applicant for leave for extension of time has to exhibit a good cause or sufficient reason for the delay. In the case of ***Mumello v. Bank of Tanzania*** [2006] E.A. 227, it was observed that:

"... application for extension of time is entirely in the discretion of the court to grant or refuse and that extension of time may only be granted where it has been sufficiently established that the delay was, due to sufficient cause."

As to what amounts to good or sufficient cause, the Court of Appeal in the case of ***Jumanne Hassan Bilingi v R.***, Criminal Application No, 23 of 2013 (CAT) stated as follows:

"...what amounts to good cause is upon the discretion of the court and it differs from case to case. But basically, various judicial pronouncements define good cause to mean, reasonable cause which prevented the applicant from pursuing his action within the prescribed time."

The Court of Appeal in various authorities has tried to set guidelines to be followed by the courts below it when exercising discretion to grant or refuse to grant extension of time. In the case of ***Lyamuya Construction Company Ltd v Board of Registered Trustees of Young Women's Christian Association of Tanzania***, Civil Application No. 2 of 2010, the

Court of Appeal laid down the factors to be considered before granting any extension of time:

- (a) The delay should not be inordinate;*
- (b) The applicant must account for all the period of delay;*
- (c) The applicant must show diligence and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take;*
- (d) If the Court feels that there are other sufficient reasons such as existence of a point of law of sufficient importance; or the illegality of the decision sought to be challenged.*

In the instant application, the applicant has accounted for the days of delay and demonstrated that the delay was caused by a technical error in an online case filing system. For that reason, I think the applicant cannot be blamed for non-registration of his earlier application which was filed well within time. Given the fact that the applicant is in custody, but he managed to make follow up on his intended appeal, I am of a firm view that he was diligent in pursuing his appeal and has shown sufficient cause for the delay warranting the grant of his application by this court. Coupled with the fact that the Republic has not opposed the applicant's request, I see no good reason for withholding the same.

In this regard, the applicant is granted leave to file notice of appeal within ten (10) days and petition of appeal within forty-five (45) days, both from the date of this ruling.

Order accordingly.


KADILU, M.J.

JUDGE

13/10/2023

Ruling delivered in chamber on the 13th Day of October, 2023 in the presence of the applicant and Ms. Suzan Barnabas, State Attorney for the Respondent.




KADILU, M.J.,

JUDGE

13/10/2023.