

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

MISC. CRIMINAL APPLICATION NO 87 OF 2023

*(Originating from the District Court of Chunya at Chunya Criminal Case no.
282/2020)*

ANANGISYE LUPASA..... APPLICANT

VERSUS

THE REPUBLIC.....RESPONDENT

RULING

Last hearing: 13/11/2023

Date of Ruling: 8/12/2023

Nongwa, J.

The applicant has brought this application under section 361 (2) of the Criminal Procedure Act, Cap 20 R.E 2022. In his application he prays for the following orders:

- (i) That this Honorable court be pleased to grant leave to the applicant to file an appeal out of time.
- (ii) Any other relief this honorable Court may be pleased to grant.

The chamber application is dully supported by an affidavit sworn by the applicant. From the applicant affidavit, the applicant has alleged to

have been convicted for the offence of rape contrary to section 130(1) (2) (e) and 131 (1) of Penal code Cap 16 R.E 2019 and sentenced to serve 30 years jail on 3/6/2021.

He states further he prepared Notice of Appeal which was received by the court on 10/6/2020 two days later he was transferred from Ruanda Prison to Songwe Prison while the copies of judgment and proceedings were supplied to Ruanda prison on 20/4/2023 and later delivered to him on 3/8/2023, hence the time to file petition of appeal lapsed. That now he has been transferred to Ruanda for preparation of application for extension of time to appeal out of time. The Respondent, Republic has opted not to file counter affidavit.

When the applicant was called up for hearing, the applicant appeared in personal (un represented) he prayed his application and affidavit to be adopted and form part of submission for his application while the respondent enjoyed the service of Ms. Upendo Lymo the Learned State Attorney, the respondent did not object the application.

I have considered the submissions of both parties and examined the grounds stated in the applicant's affidavit, the issue is whether there is any justification for this court to exercise its discretion under section 361 (2) of the Criminal Procedure Act, Cap 20 (Revised Edition 2022). The said

provision gives this court discretion where there is good cause to admit an appeal notwithstanding that the period of limitation prescribed has lapsed.

It is trite law that extension of is a matter of discretion of court, but such discretion must be exercised judiciously and flexibly with due regard to the relevant facts of the particular case. It follows therefore, the grounds upon which an order for extension of time may be granted or otherwise would also depend on the circumstances of each case. Ordinarily, those grounds should be outside one's control. This was the position in the case of **Felix Tumbo Kisima vs. TTCL and Another (1997) TLR 57** it was stated that sufficient cause should not be interpreted narrowly but should be given a wide interpretation to encompass all the reasons or because which are outside the applicant's power to control or influence, resulting in delay in taking any necessary steps.

It was stated from the applicant affidavit that he prepared petition of appeal and notice of intention to appeal in time and it was lodged before the court but delayed in being supplied with proceedings and Judgement hence time to file appeal lapsed.

I have considered the particular circumstances of the applicant being serving time in prison, the applicant has no control over his affair.

It has been observed in the number of decisions including the case of **William Ndingu @ Ngoso vs Republic**, Criminal Application No.3 of 2014 (CAT, unreported) and **Maneno Muyombe and Another vs Republic**, Criminal Appeal No. 435 of 201, that being in prison, the applicant loses control of the appeal process thus amounting to sufficient cause for the delay.

Based on the circumstances of this application, I find applicant has advanced good cause for delay. In that regard I grant the application, notice of intention to appeal and the appeal be filed within 14 days from the date of this ruling.




V.M. NONGWA
Judge

Dated and delivered at Mbeya this 8th December, 2023 in presence of the applicant and the respondent.


V.M. NONGWA
Judge