

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IRINGA DISTRICT REGISTRY)

AT IRINGA

MISC. CRIMINAL APPLICATION NO. 38 OF 2022

(Originating from District Court of Mufindi at Mafinga
Original Criminal Case No. 76 of 2020)

PETER KIWELE APPLICANT

VERSUS

THE REPUBLICRESPONDENT

RULING

A.E. Mwipopo, J.

The applicant namely Peter Kiwele filed this application praying for the court to extend time within which to file notice of appeal and appeal out of time. The application which is made by chamber summons supported by affidavit is made under Section 361(2) of the Criminal Procedure Act, Cap. 20 R.E. 2019. Ms. Blandina Manyanda, Senior State Attorney, who appeared on behalf of the Republic did not have any objection to the application and as result she did not file any counter affidavit in this case.

The reason for delay to file notice of appeal and appeal out of time is stated in paragraph 3, 4, 5, 6 7 and 8 of the applicant's affidavit. The said reason is that after he was convicted and sentenced by Mufindi District Court he immediately informed the Prison Authority of his intention to appeal and the notice of intention to appeal was filed within time.

However, the said notice of intention to appeal was defective as result this court struck out the respective appeal. The applicant states that the said defects in his notice of intention to appeal was not intentional as the said notice was prepared by Prison Authority and he has no control over the document. He depends on prison authority in preparing his documents.

The reasons stated by the applicant has merits since as a prisoner he is under the prison control and his document for the purpose of Appeal are prepared by Prison Authority. The applicant filed his notice of intention to appeal within time but the same was struck out by this court due to its defects. This proves that the applicant's had intention to appeal immediately after the decision of District Court was delivered. The applicant was not negligent in any way. The defect in the earlier filed notice of appeal was out of his control.

For that reason the application is granted. The applicant has to file the Notice of Intention to Appeal within 10 days which start to count today and he has to file Petition of Appeal within 30 days which also start to count today. It is so ordered accordingly.

 
A.E. MWIPOPO
JUDGE
16/02/2023