

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

SONGEA SUB - REGISTRY

AT SONGEA

MISC. CRIMINAL APPLICATION NO. 20 OF 2023

(Originating from Songea District Court in Criminal Case No. 12 of 2023)

METHOD ELEMENCE @ CHANDA APPLICANT

VERSUS

THE REPUBLIC RESPONDENT

RULING

Date of last Order: 15/01/2024

Date of Ruling: 30/01/2024

U. E. Madeha, J.

To begin with, the Applicant that is none other than; Method Elemence @ Chanda, was convicted by the District Court of Songea for the offence of rape contrary to sections 130 (2) (a) and 131 (1) of the *Penal Code* (Cap. 16, R. E. 2022). He was sentenced to serve thirty (30) years imprisonment. The Applicant was aggrieved by the conviction entered, and the sentence meted by the trial Court and he lodged this application for an extension of time to file an appeal out of time.

At the hearing of the application the Applicant had no representation whereas; the Respondent was represented by none other than Ms. Gaston Mapunda, the learned State's Attorney. The reasons advanced by the Applicant in his affidavit as well as in his submissions made at the hearing of the application is on the fact that he was convicted by the District Court of Songea and sent at Songea Remand Prison but before he was supplied with a copy of judgment and proceedings, he was transferred to Kitai Prison which made him difficult to be supplied with the copy of judgment and proceedings for the purpose of lodging an appeal. He prayed for this Court to grant for an order of extension of time since the delay was beyond his control as a prisoner.

On the other hand, Mr. Gaston Mapunda, arguing for the Respondent submitted that, according to section 361 (2) of *The Criminal Procedure Act (Cap. 20, R. E, 2022)*, this Court can grant an order for the Applicant to file an appeal out of the prescribed time limit if there are sufficient reasons. He added that in this application the Applicant reason for the delay to file an appeal is on the fact that he was transferred from Songea Remand Prison to Kitai prison in Mbinga District something which made difficult for him to obtain copies of judgment and proceedings. He argued that, the reason advanced by the Applicant that he failed to file his notice of intention to

appeal and petition of appeal since he was in prison is unfounded because if he intended to appeal the Applicant was to prepare his appeal and grounds of appeal and submit them to the head of the Prison as stated under section 363 of the *Criminal Procedure Act* (Cap. 20, R. E. 2022). He added that, the Applicant was to present his notice of intention to appeal to the head of the relevant prison not necessarily in writing but even orally. To cement his argument, he referred this Court to the case of **Maiko Kyando v. Republic**, Criminal Appeal No. 554 of 2020. Therefore, he submitted that, the Applicant's transfer from one prison to another is not a sufficient reason for the delay to file the notice of intention to appeal and petition of appeal.

He added according to various decisions made by the Court of Appeal of Tanzania that for applications of this nature to succeed, the Applicant must account for each day of delay. He invited this Court to be guided by the decision rendered in the case of **Lyamuya Construction Company Ltd. vs. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010.

In this application, the judgment which is to be challenged by the Applicant was delivered on 12th July, 2023. This application was filed on

10th November, 2023, almost after ninety-two (92) days. The Applicant was to account for each day of the delay but he has not accounted for each day of delay for this Court to use its discretion to grant the extent of time. Finally, he prayed for this Court to dismiss this application for lack of merit.

In his rejoinder submission, the Applicant submitted that it is true that he was late in filing the notice of intention to appeal and petition of appeal because he was not given a chance to be heard when he presented his notice of intention to appeal. He added further that when he informed the Prison Authority on his intention to appeal, he was ordered to wait until the time for appeal lapsed. In that regard, he prayed for this Court to grant for an order for extension of time since the delay was attributed by the Prison Authority and not him.

As far as I am concerned, in this application the issue is whether Applicant's allegation that he faced challenges from the Prison Authority when he presented his notice of intention to appeal is a sufficient reason or good cause for an order of extension of time to be granted. It's important to note that the law is silent on such situations. However, the Applicant may seek for Court intervention to overseeing his appeal. This could involve filing an application for extension of time addressing how he

delayed in filing his appeal as the Applicant did in this application. Basically, for the Court to grant an order for extension of time, the Applicant must have good cause or reasonable cause. What is good cause is not provided by the law but they include all circumstances which are beyond the control of the Applicant, which prevented him from filing the appeal within the prescribed time such as illness or unforeseen events.

In this application, the Applicant was convicted at Songea District Court and sent at Songea Remand Prison but before he was supplied with the copy of proceedings, he was transferred to Kitai Prison. The Applicant was supplied with the copy of judgment and proceedings while at Kitai Prison when the time for filing an appeal was already expired. He also averred that, he tried to inform the Prison Authority but he was ordered to wait that is why he is delayed in filing his appeal.

It is true that the impugned judgment was delivered on 12th July 2023 and this application was filed on 10th November, 2023, which was after ninety-two (92) solid days from the date of judgment. Also, it is important to note that, the Applicant was sentenced by the District Court of Songea and sent at Songea Remand Prison. Before he was supplied with the copy of judgment and proceedings, he was sent to a Kitai Prison in

Mbinga District. Looking carefully to what has been stated by the Applicant, the delay was caused by the Prison Authority. Therefore, I am convinced that the Applicant's delay was not caused by the Applicant. I find the reason advanced by the Applicant to be genuine for this Court to use its discretion power and grant the extension of time as I proceed to do.

Therefore, the Applicant is hereby given ten (10) days to lodge his notice of intention to appeal and petition of appeal effective from the date of being supplied with the copy of this ruling. It is so ordered.

DATED and DELIVERED at **SONGEA** this 30th day of January, 2024.



U. E. MADEHA
JUDGE
30/01/2024

COURT: Ruling is read over in the absence of the Applicant and in the presence of Ms. Esther Mfanyakazi, the learned State Attorney for the Respondent. Right of appeal is explained.



U. E. MADEHA
JUDGE
30/01/2024