

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

BUKOBA SUB- REGISTRY

AT BUKOBA

MISCELLANEOUS CRIMINAL APPLICATION NO. 40092 OF 2023

(Arising from Criminal Case No. 41 of 2023 of Muleba District Court)

KURWA JOESEPHAPPLICANT

VERSUS

REPUBLIC RESPONDENT

RULING

25/03/2024 & 25/03/2024
E. L. NGIGWANA, J

This ruling is in respect to application for extension of time within which to lodge an Appeal out of time against the decision of Muleba District Court in Criminal Case No.41 of 2023 handed down on 20/07/2023.

The application is by way of Chamber summons made under the provisions of section 361 (2) and 392 (A) of the Criminal Procedure Act, [Cap 20 R.E 2022], and supported by an affidavit duly sworn by the applicant. The application is not opposed by the respondent/ Republic.

A brief background of this matter is to the effect that, the applicant herein was charged with the offence of Rape contrary to section 130 (1) and (2) (e) and section 131 (1) of the Penal Code, [Cap 16 R.E 2022]. It was alleged that the applicant 30/03/2023 at Gwanseli Village within Muleba District in

Kagera Region, did have sexual intercourse with a girl child aged 9 years old.

The applicant denied the charge and as a result, the case proceeded to a full trial whereas, at the conclusion of the trial, the trial court found the applicant guilty hence he was convicted and sentenced to life imprisonment. He was also ordered to compensate the victim in the tune of **TZS 1,000,000/=**.

The applicant was aggrieved by both conviction and sentence therefore, he filed a notice of intention to appeal within 10 days from the date of judgment, but delayed to lodge an appeal within the prescribed time hence this application.

The application was argued orally whereas, the Applicant appeared in person, unrepresented while Ms. Gloria Rugeye learned State Attorney, appeared for the Respondent/Republic.

Submitting in support of the application, the Applicant adopted his affidavit and prayers on the chamber application to form part of his oral submission.

The applicant stated that he was aggrieved by conviction, sentence, and compensation order but he was late to file an appeal because after being convicted, the copy of judgment was delayed by the trial court, and finally the copy of judgment was availed to him through Bukoba Prison

instead of Muleba prison, later on he discovered that the time of appeal had lapsed. He stressed that reasons for such delay as per paragraph 3 of the founding affidavit were beyond his control. He ended up his submission urging the court to grant this application.

On her side, Ms. Gloria Rugeye conceded to the applicant's application on the ground that he has advanced sufficient cause for the delay. She ended up her submission supporting the application.

Having heard submissions by the applicant and Ms. Gloria Rugeye learned State Attorney for the respondent, the issue for determination is whether the applicant has been able to advance sufficient reasons for the delay.

Section 361 (1) of the Criminal Procedure Act, [Cap. 20 R: E 2022] provides that;

"Subject to subsection (2), no appeal from any finding, sentence or order referred to in section 359 shall be entertained unless the appellant-

(a) has given notice of his intention to appeal within ten days from the date of the finding, sentence or order or, in the case of a sentence of corporal punishment only, within three days of the date of such sentence; and

*(b) has lodged his petition of appeal **within forty five days from the date of the finding, sentence or order, save that in computing the period of forty five days the time required for obtaining a copy of the proceedings, judgment or order appealed against shall be excluded.***

Section 361 (2) of the Criminal Procedure Act, [Cap 20 R: E 2022] provides that;

"The High Court may for good cause, admit an appeal notwithstanding that the period of limitation prescribed in this section has elapsed"

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

Conversely, it is also well settled that the sufficient cause depends on deliberation of various factors, some of which revolve around the nature of actions taken by the applicant immediately before or after becoming aware that the delay is imminent or might occur. See decisions in the case of **Regional Manager Tan roads Kagera versus Rinaha Concrete Co.**

Ltd; Civil Application No. 96 of 2007 CAT, (unreported) and **Republic versus Yona Kaponda and 9 others** (1985) TLR 84.

In the matter at hand, the judgment of the court was delivered on 20/07/2023. The Notice of Intention to appeal was duly filed as per dictates of section 361 (1) (a) of the Criminal Procedure Act, [Cap 20 R.E 2022]. In other words, it was filed within ten days from the date of the judgment, though no appeal was filed within 45 days after obtaining a copy of the judgment and proceedings.

Undoubtedly, the applicant being a prisoner, is not a free agent who can freely make follow-ups on his matter or do what he wants to do without restrictions as observed in the case of **Kabisa Sabiro and Two others versus Republic**, Criminal Appeal No. 191 of 2010 CAT (unreported), where the Court held that;

"The appellants being in prison, it is to be expected that every action they take has to be through those under whose authority they are"

In this matter, I shake hands with the learned State Attorney that the applicant has managed to demonstrate sufficient cause for the delay and the reasons for the delay were beyond his control.

In the event, I allow the application. The applicant is given a period of twenty one (21) days from the date of this ruling, within which to file the petition of appeal to this Court to challenge the decision of Muleba District Court in Criminal Case No. 41 of 2023 handed down on 20/07/2023. It is so ordered

Dated at Bukoba this 25th day of March, 2024.


E.L. NGIGWANA

JUDGE

25/03/2024

Ruling delivered this 25th day of March, 2024, in the presence of the Applicant in person, Ms. Gloria Rugeye learned State Attorney for the Republic, Hon. E. M. Kamaleki, Judges' Law Assistant, and Ms. Grenika, BC.


E.L. NGIGWANA

JUDGE

25/03/2024

