

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

BUKOBA SUB- REGISTRY

AT BUKOBA

MISCELLANEOUS CRIMINAL APPLICATION NO. 5907 OF 2024

(Arising from Criminal Case No. 111 OF 2022 of Ngara District Court)

GUSI JOSEPH.....APPLICANT

VERSUS

REPUBLIC RESPONDENT

RULING

15/03/2024 & 15/03/2024
E.L. NGIGWANA, J

This is an application for extension of time within which to lodge an Appeal out of time against the decision of Ngara District Court in Criminal case No.111 handed down on 31/05/2023.

The application is by way of Chamber summons made under the provisions of Section 361 (2) 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 was charged with Unnatural offence contrary to section 154 (1) (a) of the Penal Code, [Cap.16 R.E 2022]. It was alleged that the applicant on 6/11/2022, at

Runzenze Village within Ngara District in Kagera Region, did have carnal knowledge of B.K, a boy aged 13 years old.

The applicant denied the charge and as a result, the case proceeded to a full trial at which the court was satisfied that the case against the applicant was proved beyond reasonable doubt, therefore he was convicted and sentenced to a jail term of thirty (30) years.

The applicant was aggrieved by the decision of the trial court whereas on 9/06/2023, he filed the notice of intention to appeal but lodged no appeal to this court within the prescribed time, hence this application.

When the application was called on for hearing, the applicant who stood unrepresented urged the court to adopt his affidavit as part of his submission and grant the reliefs sought.

The respondent Republic had legal services of Ms. Elizabeth Twakazi learned State Attorney. The application was not contested by the respondent by way of counter affidavit, likewise during the hearing, on the major reason that the applicant has shown sufficient cause for the delay.

Now, the question for determination is whether the applicant has been able to advance sufficient reason(s) for the delay.

It is a cardinal principle that extension of time is granted in the exercise of court's discretion which must always be exercised judiciously depending on the circumstances of each case. In other words, the applicant will be granted extension of time upon demonstrating sufficient cause for the delay; whether actual or technical delay.

Principally, what constitutes sufficient or good cause cannot be laid down by any hard and fast rules. The party seeking for extension of time is therefore expected to provide the relevant material in order to move the court to exercise its discretion. See Oswald **Masatu Mwizarubi versus Tanzania Fish Processing Ltd**, Civil Application No.13 of 2010 CAT (unreported).

The applicant through his averment in paragraph 1 & 2 of the affidavit has advanced the reason for the delay being that, after being convicted, and before lodging his appeal, he was transferred from Ngara Prison to Kitengule Agricultural prison, only to find himself that he was out of time.

As already pointed out, Ms. Elizabeth Twakazi learned State Attorney for the Republic did not object this application as according to her, the applicant has advanced sufficient reasons to warrant the grant of the prayer.

Though this application is not supported by a supplementary affidavit of the Officer In charge of Kitengule or Ngara Prison, I am of the strong view that the omission has not affected the applicant's application.

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**"*

With that view, I find that the applicant has advanced good cause for the failure to file an Appeal within prescribed period of time. For that reason, 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. It is so ordered

Dated at Bukoba this 15th day of March, 2024.


E.L. NGIGWANA

JUDGE

15/03/2024.

Court: Ruling delivered this 15th day of March, 2024 in the presence of the applicant in person, Ms. Elizabeth Twakazi, learned State Attorney for the Republic, Hon. E. M. Kamaleki, Judges' Law Assistant, and Ms. Queen Koba, BC.




E.L. NGIGWANA

JUDGE

15/03/2024