

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**IN THE SUB-REGISTRY OF MANYARA**

**AT BABATI**

**MISCELLANEOUS CRIMINAL APPLICATION NO. 3260 OF 2024**

*(Originating From District Court of Babati in Criminal Case No. 19 of 2022)*

**ATYLU KHAMISI.....APPLICANT**

*VERSUS*

**THE REPUBLIC.....RESPONDENT**

**RULING**

*8<sup>th</sup> and 25<sup>th</sup> April, 2024*

**MIRINDO, J.:**

The applicant, Atylu Khamisi, was jointly charged with two other persons with whom they were convicted of the offence of unlawful possession of government trophy and sentenced to twenty-two years imprisonment. He has now applied for extension of time to appeal. In his supporting affidavit, he stated he was unable to appeal on time because he was transferred to different prisons and an advocate who handled appeals for his co-accused excluded him because of his inability to pay. These facts were confirmed by the supplementary affidavit of a prison officer from Babati District Prison. The officer added that the advocate disappeared with a copy of judgment and proceedings. The respondent Republic filed a counter affidavit in opposition of this application.

The applicant appeared in person at the hearing of the application while the respondent Republic was represented by Rose Kayumbo, learned State Attorney. The applicant had nothing to add to his application. The learned State Attorney argued that the applicant has not shown good cause for extension of time. First, the applicant had not mentioned the appeal in which he was left out. The records before me indicate that the applicant's co-accused unsuccessfully appealed to the High Court and are now processing their appeal to the Court of Appeal.

The second point of objection is that it is the legal position that where a deponent mentions another person such other person must also swear a supplementary affidavit. The applicant has not done so in the present application. It has been held in *Nzeyimana s/o Zeno v Republic* (Criminal Appeal 458 of 2007) [2013] TZCA 380 (19 April 2013) that it is expecting too much for a prisoner to secure a supplementary affidavit from a prison officer. There is no reason why this principle cannot apply to cases of this nature where the prisoner cannot easily trace the impugned advocate.

Thirdly, the applicant has not mentioned the prisons to which he was transferred. Provided that there is a supplementary affidavit from a prison officer corroborating this fact. It was incumbent upon the respondent Republic to refute this fact. This fact raises a prima facie case of transfer which has been held to constitute sufficient cause for extension of time. Fourth, the applicant has not stated when the alleged advocate disappeared with the copy of judgment and

proceedings. Once I am satisfied that the applicant's co-accused are appealing to the Court of Appeal, I hold that this objection has no merit.

Even without good cause, I am of the opinion that the applicant's prospective appeal is likely to raise points of illegality. Considering that there is a pending appeal by the applicant's co-accused, I will not address further this point.

I therefore grant the application. I direct Atyulu Khamis to file his notice of intention to appeal within ten days from the date of the delivery of this ruling and then file his petition of appeal within forty five days. It is further directed that the officer-in-charge for Babati District Prison shall facilitate the appeal process according to law.

DATED at BABATI this 23<sup>rd</sup> day of April, 2024



**F.M. MIRINDO**

**JUDGE**

**Court:** Ruling delivered this 25<sup>th</sup> day of April, 2024 in the presence of the applicant in person and in the presence of Ms Blandina Msawa, State Attorney for the respondent Republic.



**F.M. MIRINDO**

**JUDGE**

**25/4/2024**