

UNITED REPUBLIC OF TANZANIA

JUDICIARY

HIGH COURT OF TANZANIA

BUKOBA SUB REGISTRY

AT BUKOBA

ORIGINAL JURISDICTION

MISC. CRIMINAL APPLICATION NO. 1647 OF 2024

(Arising from Criminal Case No.149 of 2020 of Ngara District Court)

NZEYIMANA SIRIRO ----- APPLICANT

VERSUS

THE REPUBLIC ----- RESPONDENT

RULING

Date of last Order: 12/02/2024

Date of Ruling: 12/02/2024

BEFORE: G.P. MALATA, J

The Applicant, one Nzeyimana Siriro was aggrieved by the decision of District Court for Ngara District in Criminal Case No. 149 of 2020. The judgment thereof was delivered on 30/10/2020. The applicant was transferred to different prison to serve his custodial sentence immediately after his conviction.

The transfer from one prison to another disrupted him from taking necessary actions of appealing against the impugned decision of the said Criminal Case.

Due to lapse of time within which to file notice of appeal and appealing to this court, the applicant was compelled to apply for extension of time within which to file notice of appeal and file appeal out of time, thence, the present application No. 1647 of 2024.

The applicant narrated the reason for his failure to file notice of appeal and appeal within time including that, he was transferred to different prisons to serve his custodial sentence and failure to be supplied with copy of judgment and proceedings within time. The application was made under section 361 (1) and (2) of the Criminal Procedure Act, Cap. 20 R.E 2022.

The case was heard virtually on 12/02/2024 in the present of both parties. The applicant appeared in person and the Republic appeared through Ms. Matrida Assey learned State Attorney.

In support of the application, the Applicant had nothing to add but just asked the court to consider and grant the application based on the reasons stated in the affidavit.

On the other hand, Ms. Matrida Assey learned State Attorney did not oppose the application, but merely informed the court that, she was satisfied with the reasons advanced by the applicant on his failure to pursue appeal within time.

It is trite law that, extension of time is granted by the court discretionary upon being satisfied by the reason so advanced by the applicant. This is the gist of section 361 (2) of the Criminal Procedure Act, Cap. 20 R.E 2022 which provides that;

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

Having gone through the reasons advanced in the application, I am satisfied beyond sane of doubt that; **first**, the applicant is a convict serving a custodial sentence, thus not a free agent, **second**, the applicant had no way to pursue for his right but to do everything through the prison officers, **third**, the applicant is toothless to command the prison officers to take any necessary steps timely in appealing against the impugned decision, **fourth**, the prison officers are the ones vested with mandates to take up and make follow ups for the convicts including filing notices, requesting for copies of proceedings and judgment, preparing appeal and filing it in court. The applicant being unfree agent cannot do any of the above save through the prison officers.

In the event therefore, this court is without malingering of doubts that, the applicant has vehemently advanced sufficient reasons for delay in filing notice of appeal and appeal to this court.

Consequently, I hereby grant leave to the applicant to file notice of appeal and appeal against the decision in Criminal Case No. 149 of 2020 of Ngara District Court on condition that, he file the notice of appeal and appeal to this Court within **thirty (30) days** from the date of this ruling.

IT IS SO ORDERED.

DATED at **BUKOBA** this 12th February, 2024.


G.P. Malata
JUDGE
12/02/2024

DELIVERED at **BUKOBA** this 12th February, 2024.




G.P. Malata
JUDGE
12/02/2024