

THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
MBEYA SUB - REGISTRY
AT MBEYA
MISC. CRIMINAL APPLICATION NO. 11306 OF 2024

(Arising from District Court of Rungwe at Tukuyu, Criminal Case No. 150/2017)

OMARY MWANG'OMBE.....APPLICANT
VERSUS
THE REPUBLIC.....RESPONDENT

RULING

23 May 2024 & 23 May 2024

SINDA, J.:

The applicant has brought this application under Section 361 (2) of the Criminal Procedure Act, Cap 20 R.E 2022 (the **CPA**). The applicant prays for the following orders:

- (i) That – the Hon. Court may be pleased to grant the applicant leave for an extension of time within which to lodge notice of appeal and petition of appeal out of time in Criminal Case No. 150 of 2017.*
- (ii) That – any other relief as this Hon. Court may deem fit and just to grant.*

The chamber application is duly supported by an affidavit sworn by the applicant. The applicant was convicted for the offence of Attempted Rape contrary to Section 132 (3) of Penal Code Cap 16 R.E 2022 (the **Penal Code**) and sentenced to serve thirty (30) years in jail.

The applicant appealed to the High Court and the High Court ordered the applicant to be returned to the trial court to be convicted according to law.

On 19 October 2023, he was convicted and transferred to Ruanda Prison.

On 23 October 2023 he was transferred to Songwe prison without being supplied with necessary documents by the trial court to prepare his notice of appeal.

On 20 March 2024, he received the Trial Court Judgment and order but the time for filling the notice of appeal had expired. As the documents were supplied to him while being transferred to Ruanda prison, thus the failure to lodge notice of appeal in time was not his fault and totally beyond his control.

On the other hand, the Respondent opted not to file counter affidavit.

At the hearing, the applicant appeared in person and unrepresented. The respondent was represented by Mr. Augustino Masesa, learned State

Attorney. The applicant briefly prayed the court to adopt his reasons set forth in his affidavit. Mr. Masesa did not object the application.

Having considered the submissions of both parties and examined the grounds stated in the applicant's affidavit, the question is whether there is any justification for this court to exercise its discretion under Section 361 (2) of the CPA. The said provision states that:

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

From the record, it is clear that the necessary documents that would enable the applicant to lodge and file the notice of appeal were supplied late to him.

That being the case and considering that the applicant is currently serving time in prison, he has no control over his affairs. The filling was at the mercy of the prison authority. It has been decided in the number of cases that being in prison, the applicant loses control of the appeal process thus amounting to sufficient cause for the delay. See: **Buchumi Oscar vs Republic**, Criminal Appeal No. 295 "B" of 2011 (CAT, unreported), **William Ndingu @ Ngoso vs Republic**, Criminal Application No.3 of 2014 (CAT,

unreported) and **Maneno Muyombe and Another vs Republic**, Criminal Appeal No. 435 of 2016.

As a result, I find the applicant advanced good cause for the delay. I grant the application.

Dated at Mbeya on this 23 day of May 2024.



A. A. SINDA
JUDGE

The Ruling is delivered on this 23 day of May 2024 in the presence of the applicant and Mr. Augustino Masesa, learned State Attorney for the Respondent.



A. A. SINDA
JUDGE