

**THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
MBEYA SUB - REGISTRY
AT MBEYA**

MISC. CRIMINAL APPLICATION NO. 11307 OF 2024

(Arising from the District Court of Chunya at Chunya, Criminal Case No. 282/2020)

ANANGISYE LUPASA.....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. 282 of 2020.*
- (ii) That – any other relief as this Hon. Court may deem fit and just to grant.*

The chamber application is dully supported by an affidavit sworn by the applicant. The applicant was convicted for the offence of rape contrary to

Section 130 (1) (2) (e) and 131 (1) of Penal Code Cap 16 R.E 2022 (the **Penal Code**) and sentenced to serve thirty (30) years in jail.

The judgment of the trial court was delivered on 3 June 2021 and the applicant prepared the Notice of Appeal on 5 June 2021 which he handed over to the prison authority to submit to court. On 20 April 2023, he was supplied with the proceedings and copy of the judgment from the trial court. He then prepared the petition of appeal and handed to the officer in charge for transmitting to court.

The applicant waited for a long time for his appeal to be heard. On 18 March 2024, he was notified by the prison authority that his appeal was forwarded out of time due to the new filling system i.e. the Electronic Case Management System (**eCMS**). The applicant stated that his appeal was filled in the old system (**JSDS2**) and when it was filled in the new system the time had already lapsed. He added that, he complied with Section 361 (a) and (b) and Section 363 of the CPA, thus the delay is not his fault. 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 applicant prepared the necessary document in time but the same were not delivered in court on time as the case filling system had changed from JSDS2 to eCMS.

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

**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

**A. A. SINDA
JUDGE**