

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

BUKOB A SUB- REGISTRY

AT BUKOB A

CRIMINAL APPLICATION NO. 2579 OF 2024

(Arising from Criminal Appeal No. 47 of 2021 Dated on 23rd November, 2021 Before Hon. J.M. Minde – PRM (EXT J), Criminal Revision No. 03/2019 of the High court of Bukoba, Before Hon F.H. MTULYA, J. Dated on 15TH June, 20220. Originating from criminal case No. 173/2019 of Karagwe District Court before Hon. M.C. MANJALE – RM, Dated on 21st October, 2019.)

MAGANGA ONESMO.....APPLICANT

VERSUS

THE REPUBLIC.....RESPONDENT

RULING

08/02/2024 & 09/02/2024
E.L. NGIGWANA, J

By way of chamber summons made under section 11 (1) of the Appellate jurisdiction Act, [Cap 14 R.E 2019], the applicant herein is seeking for extension of time within which to file a notice of intention to appeal to the Court of Appeal.

The application is supported by an affidavit sworn by the applicant. Upon being served with the chamber summons, the respondent Republic opted to file no counter affidavit in reply.

When the application was called on for hearing, the applicant appeared in person, unrepresented whereas the respondent Republic appeared through Mr. Elias Subi, learned State Attorney.

However, at this juncture, I find it apposite to state the factual background of this application. In the District Court of Karagwe sitting at Kayanga, the applicant herein was charged with Unnatural Offence contrary to section 154 (1) (a) of the Penal Code, [Cap.16 R.E 2019], now [Cap. 16 R.E 2022].

At the trial court, it was alleged that the applicant had carnal knowledge of a primary school girl aged ten (10) years old. The applicant denied the charge.

After a full trial, the trial court was satisfied that the case was proven beyond reasonable doubt therefore, the applicant was convicted and sentenced to a jail term of thirty (30) years.

The record reveals that the applicant was aggrieved by the decision of the trial court dated 21/10/2019 but also the way the case was conducted therefore, he lodged a complaint to the Hon. Judge in Charge. Following the said complaint, Revision was initiated as per section 372 of the Criminal Act, [Cap.20 R.E 2019], now [Cap.20 R.E 2022] and registered as Criminal Revision No.3 of 2019. Upon hearing the said Revision, the decision of the trial court was confirmed by this court (Mtulya, J) as he found that failure to disclose the offence and section of law which the applicant was convicted

and sentenced was an omission which did not occasion any injustice to the applicant.

Thereafter, the applicant lodged an Appeal to this court, but it was transferred and assigned to J.M. Minde PRM (Ext. J) who on 23/11/2021, found the appeal (criminal Appeal No.47/2021) incompetent since it was already heard by the High court by way of Revision. The applicant was advised to appeal to the Court of Appeal, hence this application.

The reasons advanced by the applicant in his affidavit and his submission are two; first technical delay and two, his transfer from Bukoba Prison to Kitengule Agricultural Prison. The learned state Attorney did not oppose the application on the ground that the applicant has demonstrated good cause for delay thus deserves to be granted extension of time.

I have considered submission by the applicant and submission by the learned State Attorney supporting this application. Section 11 (1) of the Appellate Jurisdiction Act Cap 141 R.E 2019 which has been cited by the Applicant in chamber summons provides that

*"Subject to subsection (2), the High Court or, where an appeal lies from a subordinate court exercising extended powers, the subordinate court concerned, **may extend the time for giving notice of intention to***

appeal from a judgment of the High Court or of the subordinate court concerned, for making an application for leave to appeal or for a certificate the case is a fit case for appeal, notwithstanding that the time for giving the notice or making the application has already expired"

Further above, it is clear that among other things, the High Court has power to extend time for giving notice of intention to Appeal to the Court of Appeal against the judgment or decision of the High court.

I have given due consideration to the reasons advanced in the affidavit as well as his submission. The first reason is technical delay. The second reason is the applicant's transfer from Bukoba Prison to Kitengule Agricultural Prison. Technical delay ended on 23/11/2021 when his appeal to wit; Criminal Appeal No.47 of 2021 was found incompetent.

Considering that after his appeal was found incompetent, the applicant was transferred to Kitengule Agricultural Prison, and the fact that he being a prisoner, is not a free agent, meaning; everything depends on assistance of the prison admission officers, but also cannot decide on when to be assisted, I am satisfied that the reasons as put forward by the applicant in support of his application constitute sufficient reasons to warrant grant of extension of

time within which to file the Notice of intention to Appeal to the Court of Appeal.

In the upshot, the applicant should give a notice of his intention to appeal to the Court of Appeal within 10 days from the date of the delivery of this ruling. Furthermore, if the applicant is not in possession of the proceedings and judgment, he should request for the copy of proceedings and the judgment sought to be impugned, and upon receipt of the same, he should lodge the appeal within 45 days. It is so ordered.

Dated at Bukoba this 9th day of February, 2024.


E.L. NGIGWANA

JUDGE

09/02/2024

Court: Ruling delivered this 9th day of February 2024 in the presence of the applicant in person, Mr. Elias Subi, learned State Attorney for the respondent Republic, Hon. E. M .Kamaleki, JLA and Ms. Queen Koba, B/C.


E.L. NGIGWANA

JUDGE

09/02/2024

