

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

MISC. CRIMINAL APPLICATION NO. 11300 OF 2024

*(Originated from the District Court of Mbozi at Vwawa, Criminal Case No.
11/2023)*

EMMANUEL CHARLES KIAKA.....APPLICANT

VERSUS

THE REPUBLIC.....RESPONDENT

RULING

27 May 2024 & 27 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. 11 of 2023.*
- (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 has alleged to have been convicted for the offence of Armed Robbery contrary to section 287A of Penal Code Cap 16 R.E 2022 and sentenced to 30 years imprisonment.

The applicant received the trial court proceedings and the copy of judgement on 8 November 2023, he prepared petition of appeal and handled it to prison authority for transmitting it to the court. Later, he made follow-ups and he was told that his appeal was forwarded to court out of time due to the challenges of the court filing system. Thus, the failure to lodge notice of appeal and petition of appeal on time was not his fault and totally beyond his control. The Respondent did not opt to file counter affidavit.

At the hearing, the applicant appeared in person and unrepresented. The respondent was represented by Mr. Lordguard Eliamani, Learned State Attorney. The applicant briefly prayed the court to adopt his reasons set forth in his affidavit. Mr. Eliamani did not object the application.

Having considered the submissions of both parties and examined the grounds stated in the applicant's affidavit, the question 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 petition of appeal was petition late to the court due to the challenges of the new court system of filling appeal documents.

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 27 day of May 2024.



A. A. Sinda

A. A. SINDA
JUDGE

The Ruling is delivered on this 27 day of May 2024 in the presence of the applicant and Mr. Lordguard Eliamani, learned State Attorney for the respondent.



A. A. Sinda

A. A. SINDA
JUDGE