

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

**MISC. CRIMINAL APPLICATION NO. 11297 OF 2024**

*(Originated from the District Court of Mbarali at Rujewa, Criminal Case No.  
307 of 2022)*

**YUSUPH JOSEPH @ TAMBALAMANDU.....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. 307 of 2022.*

*(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 burglary and theft contrary to Section 294 (1)(2)(B), 258(1) and 265 of Penal Code Cap 16 R.E 2022 (the **Penal Code**) and sentenced to serve three (3) years in jail on both counts.

The applicant appealed to the High Court after receiving the proceedings and copy of judgment. He was later notified by the prison authority of Ruanda that his appeal was forwarded out of time due to the challenges of the new court filing system. He added that the delay was not his fault and it was 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 enjoyed the service of 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 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 on time but the same was not delivered in court promptly 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 27 day of May 2024.



**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**  
**JUDGE**