

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

MISC. CRIMINAL APPLICATION NO. 7587 OF 2024

*(Originated from District Court of Mbarali at Rujewa in Criminal Case No
207 of 2022)*

SHABAN FIKIRINI @ JAMES.....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. 90 of 2019.*

(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 of rape contrary to Section 130 (1) (2) (e) and 131(1) of the Penal Code Cap 16 [R.E 2022] (the **Penal Code**) and was sentenced to serve thirty (30) years imprisonment.

The applicant was supplied with the copy of judgment and proceedings on 30 December 2021 while in Songwe agriculture prison, and he prepared the petition of appeal. However, when he perused the names that appeared in the notice of appeal were different from the ones mentioned in the proceedings and copy of judgment.

The applicant prepared another notice of appeal but when it was forwarded to the court it was filed out of time. The reason that made his notice of appeal to be defective is the typing error done at Mbarali prison, as he was already transferred to Ruanda prison via Songwe prison. He concluded that the reason for delay was not his fault and was 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. 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 in this application 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, the applicant had prepared the notice of appeal in time but the same had typing errors, as the names that appeared in the notice of appeal were different from those in the proceedings and copy of judgment from the trial court. The mistake was allegedly done by Mbarali prison when the applicant was being transferred to Ruanda prison. And by the time he forwarded another notice of appeal to court, time had already lapsed.

That being the case and considering that the applicant is currently serving time in prison, he has no control over his affairs. The filing 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. Eliamani, learned State Attorney for the respondent.



A. A. Sinda

A. A. SINDA
JUDGE