

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

**MISC. CRIMINAL APPLICATION NO. 11299 OF 2024**

*(Originated from Resident Magistrate Court of Mbeya, Criminal case No. 146/2019)*

**ISAYA WILIAM ISAKWISA..... 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. 146 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 for offence of Unnatural offence contrary to section 154 (1) (a) (2) of the Penal Code Cap 16 R.E 2002 (the **Penal Code**) and sentenced to jail life imprisonment.

The applicant received the trial court proceeding and copy of judgement on 9 January 2024, he prepared petition of appeal and handled it to prison authority for transmitting it to court. He followed up the prison authority on his appeal and he was told that his petition of appeal was filed out of time due to the challenges of court system on filling appeal. Thus failure to lodge notice and petition of appeal within time was not his fault and totally beyond his control. On other hand 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 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 petition of appeal was lodged late to 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 applicant advanced the good cause for 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. Eliamani, learned State Attorney for the respondent.



A. A. Sinda

**A. A. SINDA**  
**JUDGE**