

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(DAR ES SALAAM SUB-REGISTRY)

AT DAR ES SALAAM

MISC.CRIMINAL APPLICATION NO. 133 OF 2022

(Arising from Criminal Appeal Case No. 6 of 2023 District Court of Bagamoyo dated 5th May 2023 originating from Msoga Primary court Criminal case no 85 of 2022)

DONALD ASUKILE APPLICANT

VERSUS

FATUMA MOHAMED RESPONDENT

RULING

MKWIZU, J:

This is an application for extension of time to lodge a petition of appeal against the decision in Pc Criminal Appeal No 6 of 2023 made under the provisions of Section 25(1)(a) and of the Magistrate Court Act, Cap 11 R.E 2019 supported by the applicant's . Efforts to trace the respondent proved futile even after publication of the notice in one issue of Mwananchi Newspaper dated 29/5/2024 hence an ***ex-parte*** hearing of the application.

During the hearing, the applicant who was in person argued the court to consider his affidavit in support of the application reiterating two grounds deposed in his affidavit pressing for the grant of the application.

The facts deposed in the affidavit are that the applicant was before Msoga primary court charged, convicted and accordingly sentenced with robbery contrary to sections 285 (1) and 286 of the penal code Cap 16 RE 2022. He unsuccessfully appealed to the District Court through Criminal Appeal No 6 of 2023. He then through Ubena Prison official wrote a letter

requesting for necessary documents for appealing purposes. On that process, he was transferred to Ukonga Central Prison where he found himself out of time to appeal.

Paragraph 8 of the affidavit is also an assertion to the illegality on the impugned decision. According to the applicant, his age was ignored during sentencing. He on the above grounds urged the court to allow the application so that he can exercise his constitutional right to appeal.

Having considered the affidavit and the prayers sought and taking into account that the accused is a lay person, incarcerated without control of his movement and there being no genuine reason given to the contrary, I find it appropriate to grant the application.

The applicant is to file both a notice of appeal and the petition of appeal within 30 days from the date of this order.

Dated at Dar es Salaam this 30th day of May 2024


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E. Y MKWIZU
JUDGE

