

**IN THE HIGH COURT OF TANZANIA
(SUMBAWANGA DISTRICT REGISTRY)
AT SUMBAWANGA**

MISC. CRIMINAL APPLICATION NO. 47 OF 2022

(Original Criminal Case No. 151 of 2019 from the District Court of Sumbawanga at Sumbawanga)

ISAYA MWALIBA APPLICANT

VERSUS

THE REPUBLIC RESPONDENT

RULING

09th April & 03rd June, 2024

MRISHA, J

In this application, the applicant **Isaya Mwaliba** is seeking an order for the extension of time to file a notice of appeal and appeal out of time. The Chamber summons is made under section 361(2) of the Criminal Procedure Act, Cap 20 R.E. 2002 [now 2022] (the CPA) and supported by an affidavit sworn by Isaya Mwaliba, the applicant.

The main reasons leading to this application can be briefly gathered from his affidavit and court records. The applicant was charged and convicted by the District Court of Sumbawanga at Sumbawanga on the offence of Rape contrary to section 130(1) and (2) (e) and section 131(1)(a) of the Penal Code [Cap 16 R.E. 2002].

The applicant pleaded not guilty, but upon hearing of the case on merits, the trial court convicted and sentenced him to serve thirty (30) years imprisonment. The applicant was dissatisfied with the decision of the trial court, but he failed to lodge notice of appeal within statutory time. Hence, this application.

In his affidavit, the applicant averred that he filed his notice of intention to appeal on time in accordance with the law and received a copy of the judgment of the trial court. He further added that on 19th July, 2022 his appeal was struck out due to the fact that prison officer failed to indicate the date of receipt. Hence, he decided to file the present application in order to be granted extension of time to appeal to the apex Court out of time.

When the application was scheduled for hearing, the applicant appeared in person, unrepresented whereas the respondent Republic had the legal service of Mathias Joseph, learned State Attorney. Being a lay person, the applicant prayed to adopt his affidavit to form part of his submission in chief and he prayed to this court to consider his grounds and grant his application.

In response, Mr. Mathias Joseph, supported the application by arguing that the application filed by the applicant does not prejudice the respondent rights' and it will be better for the applicant to have his appeal be heard on merits.

Again, the learned State Attorney argued that since the applicant is a convict, he cannot prepare any documents while he is in prison unless for the assistance of the prison officer. Hence, he implored this court allow the application.

From above submissions as well as the records of the trial court referred thereto which I have passionately considered, I find the issue which requires my determination is whether the applicant has assigned some good cause for his application to be granted.

Moreover, as it was held in the case of **Laurent Somon Assenga V Joseph Magoso and 2 other**, Civil Application No. 50 of 2016(Tanzlii) that what is a good cause is a question of fact depending on the facts of each case and for that reason, many and varied circumstances could constitute good cause in any particular case.

In his sworn affidavit, the applicant has furnished the reasons of his application for extension of time particularly at paragraph 2, 3, 4 and 5. The main reasons are that the prison officer failed to indicate the date of receipt thus, the court struck out the appeal, while, the counsel for the respondent Republic has supported the application by arguing that the applicant is a convict, he cannot prepare any documents while he is in prison unless for the assistance of the prison officer.

I concur with the submission of the learned State Attorney that it is a common ground that being a prisoner, preparation of his documents depends on the assistance of the prison officer. Thus, it is obvious that failure by the prison officer to indicate the date of the receipt of the stamped documents was contributed by circumstance beyond the applicant's control. In my view, the applicant has assigned sufficient reasons for his delay hence he cannot be blamed on the same.

In the light of those reasons, the application is granted. The applicant is hereby given fourteen (14) days from this ruling to file his notice of appeal and the court further orders that the intended petition of appeal be lodged at the appropriate registry within thirty (30) days from the day of this ruling.

It is so ordered.



A.A. MRISHA
JUDGE
03.06.2023

DATED at **SUMBAWANGA** this 03rd day of June, 2024.



A.A. MRISHA
JUDGE
03.06.2023