

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

MISC. CRIMINAL APPLICATION NO. 11269 OF 2024

*(Arising from the District Court of Mbarali at Rujewa, Criminal Case No.
123/2023)*

EMMANUEL MASHAKA MKONGWE.....APPLICANT

VERSUS

THE REPUBLIC.....RESPONDENT

RULING

3 June 2024 & 3 June 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. 123 of 2023.*

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

At the hearing, the applicant appeared in person and was 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 to the application.

The applicant stated that he received the trial court proceedings and a copy of the judgment on 28 December 2023. He prepared the petition of appeal and handed it to the officer in charge of Ruanda prison to forward it to court. He was later informed by the officer in charge that the petition was filed out of time due to the changes in the court filing system. He further stated that the reason for the delay was not his fault and beyond his control. On the other hand, the respondent opted not to file the counter affidavit.

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 to court on time as the case-filing 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 filing was at the mercy of the prison authority. It has been decided in a 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. The applicant is to file a notice of appeal and petition of appeal within 21 days from the date of this Ruling.

Dated at Mbeya on this 3 day of June 2024.



A. A. Sinda

A. A. SINDA
JUDGE

The Ruling is delivered on this 3 day of June 2024 in the presence of the applicant and Mr. Eliamani, learned State Attorney for the respondent.