

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

MISC. CRIMINAL APPLICATION NO. 11294 OF 2024

*(Arising from Resident Magistrate Court of Songwe at Vwawa, Criminal
Case No. 33 of 2022)*

MOSES PELEGRIN KIMBINDU.....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 a notice of appeal and petition of appeal out of time in Criminal Case No. 33 of 2022.*

(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 trafficking narcotic drugs 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. Salmin Zuberi, Learned State Attorney. The applicant briefly prayed the court to adopt his reasons set forth in his affidavit. Mr. Zuberi did not object to the application.

The applicant stated that the trial court's judgment was delivered on 26 October 2023. The applicant was taken to Mbozi prison, where he prepared the notice of appeal and handed it to the officer in charge. On 22 February 2023, he was transferred to Songwe prison. On 18 March 2024, he was transferred to Ruanda Central Prison, where he received proceedings and a copy of the judgment. He then prepared his petition of appeal on time.

However, when the officer in charge of Ruanda Central Prison was about to forward his petition to court, he discovered that there was no notice of appeal attached to his petition. The officer in charge of Ruanda Central Prison communicated with the officer in charge of Mbozi and Songwe

prisons in search of the document but to no avail. He emphasized that the delay was not his fault as it was 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 the 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 filling 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
JUDGE