

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

**MISC. CRIMINAL APPLICATION NO.11293 OF 2024**

*(Arising from the District Court of Mbeya, Criminal Case No. 136/2022)*

**SHUKURANI JOSEPH NYEMA.....1<sup>ST</sup> APPLICANT**

**YUSUPH OMARI.....2<sup>ND</sup> APPLICANT**

**VERSUS**

**THE REPUBLIC.....RESPONDENT**

**RULING**

*3 June 2024 & 3 June 2024*

**SINDA, J.:**

The applicants have brought this application under section 361 (2) of the Criminal Procedure Act, Cap 20 R.E 2022 **(the CPA)**. The applicants pray 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. 136 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 applicants. The applicants have 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 applicants appeared in person and were 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 applicants prepared their notice of appeal and petition of appeal on time after receiving a copy of the judgment and proceedings on 1 November 2023. They handed them to the prison authority to forward to court. From 1 November 2023 to 18 March 2024, they waited to be summoned by the high court to hear their appeal without success. Later, the officer in charge notified them that their appeal was forwarded to court out of time due to the changes in the court filing system. Thus, failure to lodge notice and petition of appeal within time was not their

fault and totally beyond their control. On the other hand, the respondent opted not to file a 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 a 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 JSDDS2 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 applicants are to file a notice of appeal and petition of appeal within 21 days from the date of this Ruling.

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.