

THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

MBEYA -SUB REGISTRY

AT MBEYA

MISC. CRIMINAL APPLICATION NO.11298 OF 2024

(Arising from District Court of Ileje at Itumba, Criminal Case No. 14/2023)

MESHAKI SIMITON MWASHILINDI.....1. APPLICANT

ENOCK WILLIAM MASEBO.....2. 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. 14 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 applicants. From the applicant's affidavit, the applicant has alleged to have been convicted for the offence of burglary contrary to section 294 (i) (b) and 2 and for the offence of theft contrary to section 258(1)(2)(a) and 265 both of penal code Cap 16 R.E 2022 and sentenced to serve 10 years jail for burglary and five years jail for theft, the sentence to run concurrently.

At the hearing, the applicants appeared in persona and were unrepresented. The respondent was represented by Salmin Zuberi, State Attorney. The applicant briefly prayed the court to adopt reasons set forth in the affidavit. Mr. Zuberi did not object to the application.

The judgment of the trial court was delivered on 23 May 2023. Immediately, they prepared a notice of appeal and handed it to the prison authority for transmission to court. On 25 May 2023, they were transferred to Songwe prison without being supplied with the proceedings and a copy of the judgment in order to prepare their appeal on time. On 18 March 2024, they were transferred to Ruanda Central Prison, where they received a copy of the Proceedings and judgment,

and without delay, they prepared a petition of appeal. However, when they wanted to submit to court, the prison authority noticed that there was no notice of appeal in their file. They were informed that a notice of appeal was not there. They stated that it was not their fault that the appeal was filed out of time and was 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 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 petition of appeal was lodged late to court due to transfer from one prison to another. As a result, their notice of appeal was misplaced.

That being the case and considering that the applicants are currently serving time in prison, they have no control over their 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 applicants advanced the good cause for delay. I grant the application. The applicants are to file a notice of appeal and the petition of appeal within 21 days from the date of this Ruling.

days from the date of this Ruling.

Dated at Mbeya on this 3day 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. Zuberi, learned State Attorney for the respondent.