

THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

MBEYA SUB-REGISTRY

AT MBEYA

MISC. CRIMINAL APPLICATION NO. 1082 OF 2024

(Arising from Criminal Case No. 36/2023 in the District Court of Mbeya at Mbeya)

BETWEEN

FARAJA MWALYEGO..... APPLICANT

VERSUS

THE REPUBLIC.....RESPONDENT

RULING

19th & 23rd February, 2024

KAWISHE, J.:

This is an application for extension of time within which to appeal out of time to this Court against a decision of the District Court of Mbeya at Mbeya in Criminal Case No. 36 of 2023. The application is made by way of chamber summons under section 361 (1)(a), (b) and (2) of Criminal Procedure Act, CAP 20 R. E. 2022 (the CPA). The application is supported by an affidavit sworn by Faraja s/o Mwalyego, the applicant.

The applicant was charged with offence of rape contrary to section 130(1), (2)(e) and 131(1) of the Penal Code, Cap. 16 R.E. 2022

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preferred this appeal challenging the decision of the District Court. The District Court of Mbeya convicted and sentenced him to serve thirty years' jail term, hence this application for extension of time to file his appeal against the decision of the trial court.

At the hearing the applicant was represented by Mr. Ntegwa Mpinyaga learned counsel whereas Mr. Lodgud Eliamani State Attorney appeared for the Republic.

The applicant's counsel Mr. Ntegwa prayed to the court that the amended applicant's affidavit be adopted and form part of his submission. The affidavit has 14 reasons to support the application. All those paragraphs can be reduced to the following three reasons- that the applicant is a prisoner hence the prison's environment is not supportive, the applicant was transferred from Ruanda Prisons in Mbeya to Ludewa and that despite the judgment was delivered in October 2022 the applicant's mother was served with a copy in November 2023.

Mr. Ntegwa added that, apart from the challenging environment, the applicant lost his father while in Ludewa prison and his mother had to stop

pursuing his appeal process to cater for the funeral of the head of their family. He prayed to the court to allow the applicant's application.

Representing the Republic, Mr. Eliamani learned State Attorney did not object to the application. He stated the Republic is not objecting to the application but, the Court while granting the application be pleased to observe the affidavit and analyse it for the interest of justice.

I have given due consideration to the applicant's counsel submission and the prayer by the learned State Attorney on this application. I am alive that the provisions of section 361(1)(a) of the Criminal Procedure Act, Cap 20 R.E 2022 requires the intention to appeal to be lodged within 10 days after the decision of the trial court. As a matter of principle, it is exclusively in the discretion of the court whether to grant or refuse an application for extension of time as stated in section 361(2) of the CPA. The said provision confers the High Court with discretion in the following terms:

"The High Court may, for good cause, admit an appeal notwithstanding that the period of limitation prescribed in this section has elapsed."

In exercising the discretionary powers vested to this court by the provisions of section 361(2) of the CPA, the vital question to be answered is whether the applicant has furnished reasonable and sufficient reason/cause which made him to fail to file an appeal within the time limit which was provided by law.

In this application the applicant deponed that, the prison's environment is not supportive, in my view this is a good cause because he is not as free as other citizens are to do anything at any time and place, they wish. In the prison's environment, the applicant depends on the mercy of the prison officers to assist in pursuing his appeal. In that reason and since the Republic did not object, I find it to have merit and that ground succeeds.

On the reason that the applicant was transferred from Ruanda Prison in Mbeya to Ludewa Prison in Njombe, also is a good cause as the applicant was sent hundreds of kilometers away from the court where he was sentenced making it more difficult for him to access the court and pursue his appeal processes. In that, this reason also has merit and thus accepted.

On the reason that the judgment was delivered in October 2022 and the applicant's mother was served with a copy in November 2023 is relied upon as a reason to account for the delay by the applicant. Although the court did not have an opportunity to see the certified copy of the judgment, it considered this reason given the fact that the applicant was generally inconvenienced with his current environment.

Based on the foregoing analysis, the applicant's prayer for extension of time has shown good cause bearing in mind that he is in prison. A similar reasoning was observed in **Rhobi S/o Kitang'ta Chacha vs. Republic** Criminal Application No. 58 of 2023, where learned Judge cited the case of **Maneno Muyombe & Another vs Republic** (Criminal Appeal 435 of 2016) [2019] TZCA 260 (22 August 2019) where the Court stated that:

"Being inmates serving time in prison, the appellants invariably had no control over their affairs and that they were necessarily at the mercy of the Officer-in-Charge of their prison, as it were. In this regard, it was to expect too much from them."

The same principle was advanced in **Maneno s/o Muyombe & Another vs Republic** (Criminal Appeal 101 of 2007) [2011] TZCA 132 (28 January 2011), where the court stated that:

"In view of the wording of section 361 (2) (formerly Section 361 (b)), all that is required of the appellant is to show "good cause" before the High Court can invoke its discretionary powers to extend time."

In consideration of the reasons adduced by the applicant's affidavit, the applicant has shown a good cause, thus, the answer to the question, whether the applicant has advanced good cause for his delay to lodge his petition of appeal out of time is answered in the affirmative.

The High Court in **Rhobi S/o Kitang'ta Chacha vs. Republic** (supra) deciding an application for extension of time, while exercising its discretionary powers, cited the case of **Kassana Shabani & Another vs. Republic**, Criminal Appeal No. 476 of 2007 (unreported) where Court of Appeal had this to say:

*"Since there appears to be a recurring or perennial problem, we would like to take this opportunity to make it clear (sic) that once an applicant under section 361 of the Act has **satisfactorily** accounted for the delay in giving notice of appeal or filing a petition of appeal, extension of time ought to be granted as a matter of right."*

In consequence, the application is allowed. The applicant is granted leave to lodge notice of appeal to the High Court against the decision of the District Court of Mbeya Criminal Case No. 36 of 2023 within ten (10)

days from the date of delivery of this ruling and lodge his appeal respectively.

It is so ordered.

Dated at **MBEYA** this 23rd day of February, 2024.



A handwritten signature in blue ink, appearing to read "E.L. Kawishe", with a horizontal line underneath.

E.L. KAWISHE

JUDGE

COURT: Ruling delivered in Chambers this 23rd day of February, 2024 in the presence of Ms. Julieth Katabaro, learned Senior State Attorney and in the presence of the Mr. Ntegwa Mpinyagwa learned counsel for the applicant and in absence of the applicant.



A handwritten signature in blue ink, appearing to read "E.L. Kawishe", with a horizontal line underneath.

E.L. KAWISHE

JUDGE