

**THE UNITED REPUBLIC OF TANZANIA  
JUDICIARY  
IN THE HIGH COURT OF TANZANIA  
(IRINGA SUB-REGISTRY)  
AT IRINGA**

**MISC. CRIMINAL APPLICATION NO. 11931 OF 2024**

**CLEMENCE KILAWA@MAYEMBA ..... APPLICANT**

**VERSUS**

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

**(Arising from the decision of the District Court of Njombe at Njombe in  
Criminal Case No. 35 of 2019)**

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**RULING**

Date of Last Order: 05/06/2024 &  
Date of Ruling: 07/06/2024

**S. M. Kalunde, J.:**

This application is preferred by way of a chamber summons supported by affidavit deposed by the applicant. The chamber summons is premised under section 361(2) of **the Criminal Procedure Act [Cap. 20 R.E. 2022]** (henceforth "the CPA"). The applicant is essentially seeking for the following orders:

- (a) That the court be pleased to grant the applicant extension of time to file a notice of intention to appeal and appeal out of time against the decision of the District Court of Njombe sitting at Njombe in Criminal Case No. 35 of 2019; and*
- (b) The court be pleased to grant any other order(s) that the court may deem fit and just to grant.*

The brief facts leading to the application are that: before the District Court of Njombe sitting at Njombe in Criminal Case No. 35 of 2019, the applicant was arraigned being charged with one count of rape contrary to section 131(1) of **the Penal Code [CAP. 16 R.E. 2022]**. After full trial he was convicted and sentenced to thirty (30) years imprisonment. He now wishes to appeal to this court. Being out of time, he lodged the present appeal.

In the affidavit filed in support of the application the applicant alleges that the impugned decision was delivered on the 13<sup>th</sup> day of June, 2020. Immediately, he informed the prison authority of his intention to appeal against the decision of the trial court. Believing that the appeal process had commenced, the applicant awaited to be notified of the status. Before he could further process the appeal, he was moved to Ludewa Prison. In further following up, in July, 2023, he was informed that the notice of intention to appeal and the appeal have not been lodged. The applicant pleaded further that, the delay in lodging the was not of his own making but rather of the prison authorities who failed to act on time.

At the hearing, the applicant, a self-proclaimed illiterate, had nothing to add to his application. He urged the court to consider the affidavit and grant the application so that he may pursue his appeal.

In reply, Mr. Daniel Lyatuu learned State Attorney, quickly informed the court that the respondent was supporting

the application. The learned counsel argued that in accordance with paragraphs 2, 3, 4, 5, 6 and 7 of the affidavits filed in support of the application, the applicant has demonstrated good cause within the meaning of section 361(2) of the CPA. Submitting further, the learned state counsel argued that upon notifying the prison authorities of his intention to appeal, and signing the requisite documents it was upon the authorities to assist him in processing the appeal on time. He added that the transfer to another prison, which he had no control of, was also to blame for the delay. In view of the above submissions, the learned counsel argued that the republic was supporting the application.

For my part, I have given due considerations of the oral submissions made by the parties in support of the application in light of the chamber summons and the supporting affidavit. It is glaring from the records that the main reason for the present application is the in action of prison authorities to process the applicants appeal on time. The applicant also alleges that his subsequent transfer impacted his ability to follow up the appeal process. My duty now is to examine the truthfulness of those allegation.

There is no dispute that the applicant right to appeal are guaranteed under the Constitution of the United Republic of Tanzania, 1977 and the CPA. Under the CPA, the right to appeal is provided for under section 359 (1). The section provides that any person who is aggrieved by any finding,

sentence or order made or passed by a subordinate court may appeal to this court. The section requires the subordinate court to inform that person of the period of time within which he is required to give notice of his intention to appeal and to lodge his petition of appeal.

In light of the contents of section 359 (1) of the CPA, the right to appeal is therefore exercisable upon compliance of the conditions set out under section 361(2) of the CPA. See **Sospeter Lulenga v The Republic**, Criminal Appeal No. 107 of 2006. Under the respective section a person wishing to appeal to this court must lodge a notice of intention to appeal within ten days from the date of the finding, sentence or order. The section requires further that the appeal be filed within forty-five (45) days from the date of obtaining a copy of the proceedings, judgment or order appealed against.

The requirement to comply with the conditions set out under section 361(2) of the CPA was highlighted by the Court of Appeal in the case of **Binaisa Phares Sumwa Rasta & Others vs Republic** (Criminal Appeal No. 61 of 2015) [2017] TZCA 150 (25 August 2017) TANZLII. In the said case, having quoted the provisions of section 361(2) of the CPA, the Court (Ndika, JA) stated:

*"The above provisions are definite and unmistakable. They require an intending appellant, aggrieved by a subordinate court's decision, to not only lodge his notice of intention to appeal within ten days from the date of the decision but also file the intended*

*appeal within forty-five days from the date of the impugned decision. In addition, the proviso to the said provisions excludes from the computation of the forty-five days limitation period the time required for obtaining from the subordinate court a copy of the decision sought to be challenged."*

I should add that under the respective provisions, the High Court has discretionary powers to admit an appeal notwithstanding that the period of limitation prescribed in this section has elapsed. All an applicant has to do is to demonstrate that the delay in lodging the notice of intention to appeal and appeal was caused by some reasonable or good cause.

While it may not be possible to lay down an invariable or constant definition of the phrase "good cause" so as to guide the exercise of the court's discretion under section 361(2) of the CPA, the courts have consistently considers factors such as the length of the delay, the reasons for the delay, the degree of prejudice the respondent stands to suffer if time is extended, whether the applicant was diligent, whether there is point of law of sufficient importance such as the illegality of the decision sought to be challenged. See **Ludger Bernad Nyoni vs National Housing Corporation** (Civil Application No. 372 of 2018) [2019] TZCA 154 (8 May 2019) TANZLII.

In the case under scrutiny the affidavit in support of the application demonstrates that upon being convicted and sentenced, the applicant informed the prison authorities of his

desire to appeal. He signed the requisite documents and handed them over to prison authorities in a hope that they would transmit the same to the court. After handing the required documents to the authorities the prisoner had no control of whether or when the documents would be transmitted to the court for registration.

It is common knowledge that prisoners act or take actions through the people under whom they are under authority. These people include prison authorities, wardens and other officers. These are the people responsible to admit and process prisoners' requests and applications in courts. Thus, if a prisoner acts within time to initiate his appeal process but the said appeal fails because of the negligence or oversight of prison authorities, prisoners should not be blamed or punished. This view was articulated by the Court of Appeal in the case of **William Ndingu Alias Ngoso vs. Republic**, Criminal Appeal No. 61 of 2015 (unreported) where the Court (Juma, J.A, as he then was) held:

*"Prisoners serving time in prison invariably have no control over which place in Tanzania they serve their sentences. They similarly have no control over the dates and times they are brought to court to hear the outcomes of their appeals. They do what the prison authorities direct them to. Failure of the applicant to be in Mwanza to receive the judgment of his appeal on 18 May, 2005 was not of his own making. As the court said in **Alfred Mambya vs. Republic**, the appellants serving time in prison*

*received court orders through prison authorities."*

The view was also stressed by the Court in **Maneno Muyombe & Another vs Republic** (Criminal Appeal No. 435 of 2016) [2019] TZCA 260 (23 August 2019) TANZLII, where the Court (Ndika, J.A) at page 8 stated:

*"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 unfair to expect too much from them - see, for example, **Buchumi Oscar v. Republic**, Criminal Appeal No. 295 'B' of 2011; and **William Ndingu @ Ngoso v. Republic**, Criminal Application No. 3 of 2014 (both unreported)."*

In the instant case, the applicant alleges that upon his conviction and sentence, he lodged the notice of intention to appeal and the appeal on time by presenting the same to prison authorities. However, the prison authorities failed to lodge the said notice of intention to appeal and appeal on time. Under these circumstances, a prisoner cannot be blamed or be punished.


In consequence, I hold that the applicant has demonstrated "**good cause**" within the meaning of section 361(2) of the CPA. Accordingly, the application is granted. The applicant shall file the notice of intention to appeal within (10)

days from today. The appeal shall also be lodged within forty-five days from today. Obviously, the extended period shall exclude the time period requisite for obtaining copies of the proceedings, judgment or order appealed against.

**It is so ordered.**

**DATED at IRINGA this 07<sup>th</sup> day of JUNE, 2024.**



  
**S.M. KALUNDE**  
**JUDGE**