

THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

MBEYA SUB - REGISTRY

AT MBEYA

MISC. CRIMINAL APPLICATION NO. 10893 OF 2024

(Arising from the District Court of Mbozi at Vwawa, Criminal Case No. 51 of 2023)

RIZIKI S/O JACKSON GWANDUMI..... APPLICANT

VERSUS

THE REPUBLIC.....RESPONDENT

RULING

Date of hearing: 24/6/2024

Date of Order: 1/7/2024

NONGWA, J.

The applicant has brought this application under section 361(2) of the Criminal Procedure Act, Cap 20 R.E 2022. In his application he prays for leave for an extension of time within which to lodge notice of Appeal and Appeal out of time and any other relief the Court may be pleased to grant.

The chamber application is dully supported by an affidavit sworn by the applicant RIZIKI s/o JACKSON GWANDUMI. From the applicant affidavit, the applicant has stated to have been convicted for the offence

of rape and unnatural offence c/ss 130(1)(2)(e), 131(1) and 154(1)(a) and (2) respectively of the Penal Code Cap 16 R.E.2022 and sentenced to serve life imprisonment, that judgment was delivered on 29/9/2023 and prepared notice of appeal on 30/9/2023 and the same was handed to the officer in charge of Mbozi prison for transmitting to the court. On 2/12/2023 he was transferred to Ruanda prison without being supplied with the copy of judgement and proceedings and on 18/3/2024 he received the copies of judgment and proceedings and without any delay he prepared the petition of appeal and upon forwarding the same to the court, it was discovered that the notice of appeal was missing in the file and all efforts to trace the same at the Prison office Mbozi District were in vain. The Respondent, the Republic did not file counter affidavit.

When the applicant was called up for hearing, the applicant appeared in person, unrepresented he prayed his application and affidavit to be adopted and form part of submission for his application while the respondent enjoyed the service of Ms. Prosista Paul the learned State Attorney, she did not object the application.

I have considered the application and examined the grounds stated in the applicant's affidavit, the issue is whether there is any justification for this court to exercise its discretion under section 361(2) of the Criminal Procedure Act, [Cap 20 R.E.2022]. The said provision gives this court

discretion where there is good cause to admit an appeal notwithstanding that the prescribed period of limitation has lapsed.

Extension of time being a matter of discretion of court, it must be exercised judiciously and flexibly with due regard to the relevant facts of the particular case. It follows therefore, the grounds upon which an order for extension of time may be granted or otherwise would also depend on the circumstances of each case. Ordinarily, those grounds should be outside one's control. This was the position in the case of **Felix Tumbo Kisima vs. TTCL and Another [1997] TLR 57** where it was stated that sufficient cause should not be interpreted narrowly but should be given a wide interpretation to encompass all the reasons which are outside the applicant's power to control or influence, resulting in delay in taking any necessary steps.

From the applicant's affidavit, the reasons for the delay can be stated to be transfer from one prison to another, failure by the prison authorities to submit the notice of appeal on time and delay in being supplied with copies of judgment and proceedings from District court of Mbozi at Vwawa.

From circumstances of the applicant being transferred from one prison to another, losing track of his notice of appeal submitted at Mbozi

Prison office and on top of that serving time in prison, the applicant had no control over his affair.

It has been observed in the number of decisions including the case of **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, that being in prison, the applicant loses control of the appeal process thus amounting to sufficient cause for the delay.

All said, I hold that this application is meritorious and ought to be granted. I accordingly allow this application and extend the time for lodging the notice of appeal and appeal. The applicant should lodge the notice of appeal in accordance with the requirements of the law within fourteen (14) days of the date of this ruling.



A handwritten signature in blue ink, appearing to read "V.M. Nongwa", is written over the printed name.

V.M. NONGWA
JUDGE
1/7/2024

Dated and **delivered** at Mbeya this 1st July 2024 in presence of the applicant and the respondent.

A handwritten signature in blue ink, appearing to read 'V.M. Nongwa', with a stylized flourish at the end.

V.M. NONGWA
JUDGE