

**THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE SUB-REGISTRY OF MANYARA**

AT BABATI

MISCELLANEOUS CRIMINAL APPLICATION 49 OF 2023

(Arising from Criminal Case No 24 of 2022 of the District Court of Mbulu)

JOSEPH JOVITHA.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

Date of last order: 5th February 2024

Date of Ruling: 13th February 2024

MIRINDO J.:

The applicant, Joseph Jovitha, a prisoner in Babati District Prison is applying for extension of time to appeal out of time against the decision of Mbulu District Court. This application has been made subsequent to the ruling of this Court (Barthy J) on 5/9/2023 that struck out Jovitha's appeal because his Petition of Appeal was not filed within the prescribed period.

In his affidavit in support of the application, Jovitha admits that even though copies of judgment and proceedings were issued by Mbulu District Court on time, they were misplaced in the admission section of Mbulu Prison. This averment finds support in the affidavit filed by a prison officer, one Nahman Waziri Koko.

During the hearing of the application, Jovitha simply reiterated that this Court should grant extension of time because the documents were mishandled in Mbulu Prison. The Respondent Republic, represented by Ms Anifa Ally, learned State

Attorney, did not object to the application. The learned State Attorney, properly pointed out since Jovitha was in prison, it was difficult for him to follow up the issuance of court documents.

It is clear from different authorities of the Court of Appeal that when an appeal in the High Court is found to be defective and struck out, the prospective appellant is at liberty to apply for extension of time to file the appeal. This principle is evidenced in *Moroga Mwita Moroga v Republic* (Criminal Appeal 181 of 2020) [2022] TZCA 340 (14 June 2022) where the prospective appellant applied for extension of time in the High Court after his first appeal was struck out on account of a defective petition of appeal. Again in *Francis Petro v Republic* (Criminal Appeal 534 of 2016) [2019] TZCA 304 (27 August 2019) where the High Court dismissed the appeal because it was supported with a notice of intention to appeal filed out of time, the Court of Appeal set aside the dismissal order. The Court of Appeal held that the High Court should have struck out the notice in which case the appellant could be at liberty to apply for extension of time before the High Court. This approach has also been restated in *Mohamed Shango and two Others v R*, Criminal Appeal 62 of 2016, Court of Appeal of Tanzania at Dodoma (2017). It is my considered view that principle applied with equal force to petitions of appeal filed out of time.

Section 363 of the Criminal Procedure Act [Cap 20 RE 2022], entrusts the management of appeal documents to prison officers where the appellant is in prison. This principle is evident in *Msafiri Emanuel v R*, Criminal Appeal 258 of 2010, Court of Appeal of Tanzania at Mwanza (2013) (unreported) and *Sospeter Lulenga v R*, Criminal Appeal 107 of 2006, Court of Appeal of Tanzania at Dodoma (2007) (unreported). Implicit in this rule is that delay caused by prison officers in

processing the appeal amounts to “good cause” for extending time to appeal under section 361 (2) of the Criminal Procedure Act [Cap 20 RE 2022].

Under these circumstances, I am satisfied that Jovitha has demonstrated good cause for extension of time. Since the first appeal to this Court was struck out, Jovitha is granted leave to lodge a fresh notice of intention to appeal within 10 days according to the law from the date of this ruling and petition of appeal within 45 days from the date of filing notice of intention to appeal.



F.M. MIRINDO

JUDGE

13/2/2024

Court: Delivered in chambers this 13th day of February 2023 in the presence of the Applicant and Ms Anifa Ally, State Attorney for the Respondent. B/C Lackson Roggers (RMA) present.

Right of appeal explained.



F.M. MIRINDO

JUDGE

13/2/2024

