THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

(DISTRICT REGISTRY OF MOROGORO)

AT MOROGORO

MISC.CRIMINAL APPLICATION NO. 27 OF 2022

(Originating from Criminal Case No. 53 of 2019 in the District Court of Mvomero)

SAMSON MKULAGO OLOLYAI.. APPLICANT

VERSUS

THE REPUBLIC.. RESPONDENT

RULING

Hearing date on: 16/03/2023

Ruling date on: 17/03/2023

NGWEMBE, J:

This application for extension of time is opted by the applicant Samson Mkulago Ololyai after being jailed for rape contrary to section 130 (1) (2) and 131 (1) of the Penal Code Cap 16 R.E. 2019. Immediate after being sentenced to jail, he wakeup with an intent to appeal to this house of justice, after lapse of time, hence this application for extension of time within which to appeal against his conviction and sentence.

On the hearing date of this application, the learned state Attorney Edgar Bantulaki, represented the Republic/respondent who categorically, conceded to the application for extension of time. The reason advanced by the learned State Attorney is simple and is based on rights to be heard by superior courts on cases attracting long imprisonment sentence. Equally the applicant being unrepresented, had nothing useful to address this

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court, rather in his affidavit at paragraph 3 disclosed that the reasons for delay were two, one delay to receive copies of judgement and proceedings, and second the prison officers tried to make close follows but in vain. Hence this application for extension of time.

Legally, extension of time is within the domain and discretion of this court after being satisfied that, the cause of delay was beyond the applicant's control.

Perusing the attached affidavit to the chamber summons, paragraphs 3 & 4 indicates that, upon being sentenced to jail, the applicant was not supplied with copies of judgement and proceedings of the trial court until when he used Hon. Khamsin to assist him to obtain those copies of judgement and proceedings. Basically, the delay was actuated by untimely delivery of copies of judgement and proceedings.

Moreover, it is undisputed fact that, the applicant is still serving his sentence in jail, where freedom of movement is restricted. He could not move to the court to file his petition of appeal freely. Also, he could not do so in the absence of copies of judgement and proceedings. This position is not new, there are several precedents to such effect including in the case of **Criminal Application No. 2 of 2007 between Manoma Malolela & 2 Others Vs. R,** and in **Criminal Appeal No. 107 of 2006 between Sospeter Lulenga Vs. R,** in both cases the Court of Appeal held: -

> *"Having so expressed his intention to appeal, the appellant left the matter in the hands of the prison officer who was duty bound to transmit the Notice of Appeal to the High Court. The*

default of the prison officer to forward the Notice of Appeal to the High Court is sufficient ground for extending the period of appeal"

The circumstances of a jailed person are known, he is constrained to exercise his right of appeal due to delay of supply of copies of judgement and proceedings. I may pose a notice that magistrates and judges should always be reminded to read the Chief Justice's Rules on time delivery of copies of judgement and proceedings. Any delay to do so, causes an outcry to the victims of our decision. Timely delivery of copies of judgements and proceedings, is one of the pillars of timely justice delivery to all.

Having so said, I find merits to this application, accordingly I proceed to invoke my discretionary powers to grant extension of time. Thus, the applicant may actualize his intention to appeal to this court by filing his notice of appeal within ten (10) days from the date of this ruling and thereafter file his appeal within 20 days from the last date of filing notice of appeal.

Order accordingly.

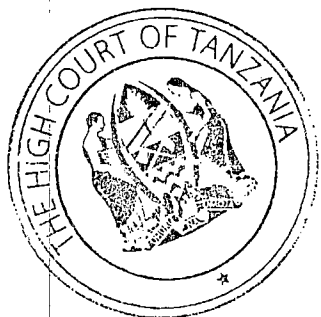**Dated at Morogoro in chambers this 17th March, 2023**

P. J. NGWEMBE

JUDGE

17/3/2023

Court: Ruling delivered in chambers this 17th day of March, 2023 in the presence of the applicant and Rose Makupa, State Attorney for the respondent/ Republic.

Right of appeal to the Court of Appeal explained.

P. J. NGWEMBE

JUDGE

17/03/2023