

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**IN THE DISTRICT REGISTRY**

**AT MWANZA**

**MISC. CRIMINAL APPLICATION NO. 19 OF 2023**

*(Original from the High Court Criminal Session Case No. 05/2021– Geita before Hon. Kilekamajenga, J)*

**EMMANUEL MBUGA ..... APPLICANT**

**VERSUS**

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

**RULING**

*7<sup>th</sup> August, 2023*

**ITEMBA, J**

In the High Court of Tanzania at Geita, the applicant was charged with and convicted of the offence of murder. He was sentenced to death by hanging. Being aggrieved with such outcomes, he is intending file an appeal to the Court of Appeal. However, he has found himself out of prescribed time, hence this application to appeal out of time.

The application is preferred under section 11 of the Appellate Jurisdiction Act, Cap 141 R.E 2019. The main grounds advanced as per applicant's affidavit are that at the impugned judgment was issued on 17/3/2023 and he filed his notice of appeal on 28/3/2023. That, once he prepared the said notice, it was the prison authorities whom had the duty to submit the same to the court. That, soon after he was

imprisoned, he was transferred to Butimba Prison for security reasons. He waited for the update of his appeal without any feedback. Upon follow up he was informed that his notice of appeal is not available at the office of the registrar and he was advised to file the present application. The respondent republic did not file any counter affidavit.

At the hearing, the applicant fended for himself while the respondent was represented by Messr. Evans Kaiza and Ibrahim Salim learned state attorneys. When given an opportunity to submit in support of his application, the applicant submitted that he prepared his notice of appeal within time through the aid of the prison officer and it is not his fault that the said notice did not reach the relevant desk. In reply, Mr. Kaiza told the court that the republic does not oppose the application. Citing the case of **Lyamuya Construction Company Limited v. the Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 (unreported) he explained that based on the grounds for extension of time in the said case, the applicant's application should be allowed. He added that, based on the applicant's submission, he prepared the application within time but he could not process it after being moved to Butimba Prisons. That, there is no sign of negligence on the part of the applicant in

prosecuting his appeal and appeal is his basic right. The issue is whether this application has merit.

The law under section 11 of the Appellate Jurisdiction Act, Cap 141 R.E 2019 states thus:

*'11.-(1) Subject to subsection (2), the High Court or, where an appeal lies from a subordinate court exercising extended powers, the subordinate court concerned, may extend the time for giving notice of intention to appeal from a judgment of the High Court or of the subordinate court concerned, for making an application for leave to appeal or for a certificate that the case is a fit case for appeal, notwithstanding that the time for giving the notice or making the application has already expired.*

*(2) In criminal cases, in the case of a sentence of death, no extension of time shall be granted after the issue of the warrant for the execution of that sentence.'*

It means therefore, extension of time will be granted on court's discretion and upon the applicant showing a good cause for the delay.

As mentioned, the respondent supports this application and he did not file the counter affidavit. The court has considered the applicants' affidavit and the grounds he has given for extension of time that he prepared his notice in time but he was moved from Geita to Butimba prison in Mwanza and when he was at Butimba Prison he could not make follow up of his appeal. That, the delay was out of his control

because he is behind bars. I find this to be a sufficient cause for this court to grant this application. Therefore, this application is hereby granted and the applicant should file his appeal within 30 days from the date of this ruling.

It is so ordered.

DATED at **MWANZA** this 7<sup>th</sup> day of August, 2023.



  
**L. J. ITEMBA**  
**JUDGE**