

**IN THE HIGH OF THE UNITED REPUBLIC OF TANZANIA
IN THE SUB -REGISTRY OF MOSHI
AT MOSHI**

MISC. CRIMINAL APPLICATION NO. 30 OF 2023

(Originating from Moshi District Court at Moshi in Criminal Case No. 56 of 2023)

SAMWEL MARKO @MINJA @ MACHANGU.....APPLICANT

Versus

THE REPUBLIC.....RESPONDENT

RULING

20th & 29th February 2024.

A.P. KILIMI, J.:

This application is brought under section 361(1) (a)(b) and (2) of the Criminal Procedure Act Cap 20 R.E 2019 and any other enabling provision of the law. The application is supported by an affidavit sworn by Samwel Marko Minja @Machangu (the applicant hereinabove) praying for the following orders;

1. That this Court be pleased to grant leave for the Applicant's notice of intention to appeal be filed out of time and appeal be heard and determined out of time.
2. That any other orders and reliefs this Honorable Court may deem fit and just to grant.

In his affidavit the applicant averred that he was a prisoner serving a sentence of life imprisonment at Karanga Central Prison Moshi and after conviction he was taken to prison to execute her sentence. The applicant

further adduced that because he was a layman at the trial Court, he did not know the right procedure to undertake so as to lodge a notice of intention to appeal within a time as prescribed by the law. It was through the assistance he got from the prison authorities he now intends to appeal against his conviction and sentence therefore prayed for Court for leave to lodge his notice of intention to appeal out of time and her appeal to be heard and determined out of time.

When the matter come before me for hearing which the same was argued orally, the applicant was unrepresented while Mr.Frank Daud Wambura a state Attorney appeared for the Republic.

The applicant in support of his application he had nothing much to say rather he prayed for her application to be allowed. On the other side Mr. Frank Daud Wambura did not object the contents of the applicant's affidavit rather he objected the application on being an omnibus application contrary to the law as the applicant had combined two applications at once one being his notice of intention to appeal be filed out of time and second his appeal to be heard and determined out of time and he prayed for the same to be dismissed.

I had time to peruse on the applicant's chamber summons and his sworn affidavit and the concern of the state attorney Mr. Frank Wambura and it is evidently clear that there are two basic prayers on this application which are extension of time to file the notice of intention to appeal and application for the appeal to be heard out of time which under the law are omnibus application.

I had further perused the file and found out that the applicant firstly filed a Criminal Application No.14/2023 in this Court praying for her appeal to be heard out of time to which the same was struck out for lack of notice of intention to appeal hence this application.

The issue for determination in this application are as follow;

1. Whether it is fatal to combine more than one prayer in a single application in *an omnibus application*.
2. Whether the applicant has adduced good cause for her application to be granted.

According to **Black's Law Dictionary** 7th edition by Garner page 1116 define doctrine of omnibus to mean;

"a doctrine of omnibus as relating to or dealing with numerous objects, or items at once,

including many thing or having various purposes."

Therefore, from above doctrine of omnibus application is an application where two or more prayers are sought in one chamber summons.

In our jurisprudence, omnibus applications are encouraged to avoid multiplicity of application and proceedings in the court as it was held in the case of **MIC Tanzania Limited vs. Minister for Labour and Youth Development and Another** Civil Appeal No.103 of 2004 CAT (Unreported) the held that;

"..therefore, unless there is specific law barring the combination of more than one prayer in one chamber summons, the court should encourage this procedure rather than thwart it for fanciful reasons.."

Applications of the same nature also was discussed in previous case of this court wherein it was observed that court abhors multiplicity, this was **Knitwear Ltd vs Shamshu Esmail** (1989) TLR 48, where Mapigano J as he then was in his wording had this to say;

"In my opinion, the combination of the two applications is not bad in law. I know of no law

that forbids such course. Court of the law abhor multiplicity of proceedings. Courts of law encourage the opposite."

I am also persuaded by the decision in the case of **Rutunda Masole vs Makufuli Motors Ltd**, Misc. Labour Application No. 79 of 2019, HC at Mwanza (Unreported) which stated that;

"The condition precedent for applicability of this rule is that the application should not be dramatically opposed to each other or proffered under different laws, complete with different timelines and distinct considerations in their determination"

From the above excerpt of legal authorities, it is clear way omnibus application in chamber summons is not automatically fatal, though in some circumstances which is different to the above may be, thus, each case has to be determined on its own facts, merits and circumstances.

Back home, to answer the first issue above, in this matter I find the application at hand to be properly before this court, because prayers sought herein are not diametrically opposed to each other in a sense that once an extension to file notice of intention to appeal is allowed it follows the prayer for an appeal to be heard and determined out of time, also both prayers are

interrelated to each other and they are both made under the same section 361(2) of the Criminal Procedure Act.

To substantiate the above, I find irresistibly to reproduce what is provided for under the said section 361(1)(a)(b) of the Criminal Procedure Act Cap 20 RE 2022 which provides that;

"An appeal from any finding, sentence or order referred to in section 359 shall not be entertained unless the appellant-

(a) has given notice of his intention to appeal within ten days from the date of the finding, sentence or order or, in the case of a sentence of corporal punishment only, within three days of the date of such sentence; and

(b) has lodged his petition of appeal within forty-five days from the date of the finding, sentence or order, save that in computing the period of forty-five days the time required for obtaining a copy of the proceedings, judgment or order appealed against shall be excluded."

In view of the above law, even though the time to prefer the applications do differ as the notice for intention to appeal are filed within 10 days from the date of findings and while the petition of appeal is to be filed within forty-five days, the facts that the applicant has delayed to file on both

above, and since they are related and follows one after another. Also, since both prayers are for extension of time in one provision, further both still depends on upon showing good cause for the delay to be allowed, I am settled are close related. Hence, in order to avoid multiplicity of applications as guided by the above cited authorities, I find it not fatal for this application to be combined together as the applicant did.

In determining issue number two on whether the application has merit to be allowed. The law under section 361(2) of the Criminal Procedure Act provides for the extension of time, the only requirement provided for is upon furnishing good cause for the delay. So, it is the court's discretion to either grant extension of time to file notice of appeal or an appeal to be heard out of time. The said section 361(2) provides that;

"The High Court may for good cause, admit an appeal notwithstanding that the period of limitation prescribed in this section has elapsed"

(See also **Hassan Bushiri vs. Latifa Mashayo**, Civil Application No. 3 of 2007 (unreported), **Lyamuya Construction Company Ltd. v Board of Registered Trustee of Young 10 Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010(unreported)).

Responding to this application, the learned State Attorney conceded on the reasons for the applicant affidavit, when the applicant in his affidavit stated that he was in Karanga Prison serving the life imprisonment sentence and him being a layperson after conviction, he could do nothing until he realized later. In my view, I think since the law is not based on merciful and sympathy toward an individual. But under circumstances of this matter, I find it reasonable that since the applicant was in prison, obviously he was not as free as other individual who could have time and resources to file his application in time. See the cases of **Otieno Obute7 vs Republic**, Criminal Application No.1 of 2011, **Maulid Swedi vs. Republic** Criminal Application No. 66/11 of 2017; **Joseph Sweet vs. Republic**, Criminal Appeal No. 11 of 2017; and **Fabian Chumila v Republic**; Criminal Application No. 6/10 of 2019 (all unreported).

On the premises and from what I have endeavored to discuss above, I am satisfied that the applicant has shown a good cause in his affidavit warranting him to be given the chance to file his notice of intention to appeal and his appeal against the conviction and sentence of Moshi District Court at Moshi in Criminal Case No.56 of 2023 on the offence of Unnatural offence

contrary to section 154(1)(a) and (2) of the Penal Code [Chapter 16 R.E 2022] .

Consequently, this application is allowed for being meritorious, and I hereby order notice of intention to appeal and a petition to appeal are to be filed within thirty days from the date of this ruling

It is so ordered.

DATED at MOSHI this day of 29th February 2024.



X

JUDGE

Signed by: A. P. KILIMI

Court: -Ruling delivered today on 29th day of February, 2024 in the presence of the applicant and Mr. Frank Wambura state Attorney for the Republic.

Sgd; **A. P. KILIMI**
JUDGE
29/02/2024