

IN THE HIGH COURT OF TANZANIA
(SUMBAWANGA DISTRICT REGISTRY)

AT SUMBAWANGA

MISC. CRIMINAL APPLICATION NO. 04 OF 2023

*(Originated from Criminal Case No. 63 of 2022 at the District Court of Nkasi at Namanyere
before D.G. Luwungo-RM)*

SHIJA MAKOYE.....APPLICANT

VERSUS

THE REPUBLIC.....RESPONDENT

RULING

27th February & 6th March, 2024

MRISHA, J.

The present application emanates from the Criminal Case No. 63 of 2022 which was handled by the District Court of Nkasi at Namanyere hereinafter referred to as the trial court and which ended with the applicant, **Shija Makoye** being convicted and sentenced by the said trial court to serve a custodial sentence of thirty (30) year imprisonment on his own plea of guilty in respect of a charge of Rape contrary to section 130 (1) (2) (e) and 131 (1) of the Penal Code, Cape 16 R.E. 2022.

It appears that despite being convicted and sentenced as such, the appellant was still aggrieved. However, his desire to challenge the above trial court's decision by way of appeal within the statutory time, could not be fulfilled due to some reasons he believes to be beyond his capacity. Hence, the instant application.

Through the filed chamber summons which is made under section 361 (2) of the Criminal Procedure Act, Cap 20 R.E. 2002 [Now R.E 2022] (the CPA), and supported by an affidavit duly sworn by himself, the applicant has moved the court to grant him the following reliefs: -

1. That this Honourable Court be pleased to allow the application of filing the appeal out of time.
2. That any other order (s) this court may deem fit and just to grant.

Again, through his respective affidavit, the applicant has averred, *inter alia*, that after being convicted by the trial court, he was informed about his right of appeal, but due to some difficulties he had faced, he failed to prepare and lodge his petition of appeal within the statutory time. That averment is pegged under paragraph 2 of the appellant's respective affidavit.

Also, at paragraphs 3 and 4 of the said affidavit, the applicant has averred that he was about to find an advocate who could assist him in preparing his petition of appeal, but he failed to do so due to some economic problems and

lack of support from his family. It is also his averment that his failure to lodge his appeal within the statutory time was not deliberate, but it was out of his control.

When the application was called on for hearing before the court, the applicant appeared in person, unrepresented while the respondent Republic was represented by Mr. Jackson Komba, learned State Attorney. The appellant began to make his submission in chief by stating that he filed with the court the chamber summons supported by an affidavit which according to him, contain some good reasons as to why he failed to lodge his appeal on time.

He also submitted that after being convicted and sentenced, he was conveyed to Kitete Prison. That being a prisoner, he depended on the Prison authorities to facilitate his preparation of the petition of appeal, but his appeal could not be lodged on time due to the available resources at the prison where he was held in; therefore, it was not his fault to delay the filing of his petition of appeal with the court. Hence, he urged the court to consider his grounds for extension of time and grant his application.

In his response to the applicant's application, Mr. Komba informed the court that he does not object the present application. He submitted that under section 361 (2) of the CPA, the High Court may extend the time of appeal to any person who has assigned some reasonable grounds. Thus, according to

him, the grounds raised by the applicant show that the applicant delayed to file his petition of appeal out of his control. Hence, he was of the view that the applicant deserves to be granted extension of time in order to file his appeal out of time.

The learned counsel also made reference to Article 13 (6) (a) of the Constitution of the United Republic of Tanzania, 1977 as amended from time to time which provide for the right to appeal. In that regard, it was the prayer of the respondent's counsel' that the applicant's application be allowed.

On my part, I have carefully gone through the submissions of both parties which clearly depicts that both of them are of the same view that the present application is backed by some good reasons which led to the applicant's delay in filing his appeal against the trial court's decision.

However, having read the enabling provision which the applicant has relied upon in bringing the present application, I am of the settled view that there is a need for the court to satisfy itself whether the reasons provided and adopted by the applicant through his affidavit, are reasonable for his application to be granted.

The said enabling provision which is section 361 (2) of the CPA, provides that,

"361. -(1),,, N/A

*(2) The High Court may, **for good cause**, admit an appeal notwithstanding that the period of limitation prescribed in this section has elapsed.” [Emphasis supplied]*

From the above provisions of the law, it is crystal clear that the High Court may admit an appeal notwithstanding that the period of limitation prescribed under section 361 has expired. Conversely, it is my strong opinion that for such admission to be made, the applicant must assign some good cause for his delay to file his appeal within the statutory time.

Therefore, it is not an automatic right for any person to be granted extension of time to appeal against the decision of the subordinate court out of time. In other words, the above law has placed the late applicants in a legal burden to assign some good cause for their applications to be granted; otherwise, they will find themselves being disallowed to knock the doors of the court and present their grievances, if they fail to meet that threshold.

The applicant whose application falls under the above circumstances, has averred that his delay to file his appeal against the trial court's decision was not deliberate because after becoming a prisoner, he was under the control of Prison Authorities where there are few resources for processing appeals to the court and also, he had some financial and family problems to the extent that

he could not be able to hire a lawyer to prepare and lodge his petition of appeal on time.

As shown above, his reasons were backed by the counsel for the respondent Republic who has submitted that the same are reasonable grounds; hence, he has supported the present application.

I have also examined the chamber summons as well as the applicant's affidavit and observed that the same were prepared by the prison authorities which indicates that what the applicant has stated in his submission in chief is nothing, but true.

I have also considered the fact that the applicant has been under prison custody since he became a convict. That in my view, is enough to show that he was under the control of the prison authorities and could not be able to find some money and use it to hire a lawyer.

Obviously, under those situations, it would be sufficient for any reasonable man to hold that the reasons assigned by the applicant through his respective affidavit and submission in chief, amount to some good cause of his delay to file his appeal within the statutory time which is forty five (45) days.

In the premise, I am persuaded to go along with the submissions of both parties that the applicant has managed to assign some good cause for his

application to be granted. Hence, I hereby grant the present application, as prayed by the applicant who is now given forty (40) days from the date of this ruling for him to file his intended appeal with the court.

It is ordered accordingly.


A.A. MRISHA
JUDGE
06.03.2024

DATED at **SUMBAWANGA** this 6th day of March, 2024.




A.A. MRISHA
JUDGE
06.03.2024