

TANZANIA / JUDGMENT

CRIMINAL APPLICATION ADOLF HITLER

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11 November 2024

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IN THE HIGH COURT OF TANZANIA MUSOMA SUB - REGISTRY AT MUSOMA MISC. CRIMINAL APPLICATION NO. 000028587 OF 2024 REFERENCE NO. 202410062000028587 BETWEEN ADOLF HITLER..... APPLICANT VERSUS REPUBLIC..... RESPONDENT

RULING

11th & 11th November, 2024 M, L. KO MBA, J, This application preferred under section 361 (2) of the Criminal Procedure Act (Cap 20 R.E 2022), whereas the applicant herein beseeching this court to grant him leave to file an appeal out of prescribed time. The application was brought by way of chamber summons and supported by affidavit deponed the applicant himself. The respondent didn't file counter affidavit to contest the application. Thus, she remained by a room to contest on the point of law only during the hearing of the application. What led to this application is that, the applicant herein was arraigned before the District Court of Butima for the offence of rape contrary to Page 1 of 5 section 130 (1) (2) (e) and (13) (1) of the Penal Code (Cap 16 R.E 2022). The case was proved against him hence convicted and sentenced to save 30 years in jail together with six strokes of the cane. The applicant was aggrieved by the said decision of the Trial Court and through the prison officer he managed to appeal in time before the High Court. But during the hearing of the appeal his counsel Mr. Mligo discovered that the appeal contained incurably mistakes and after long discussion with the applicant's mother they decided to withdraw the appeal with intent to rectify the defects. On 10th July, 2024 the High Court granted 25 days for the applicant's counsel to rectify and refile his application but his counsel withdraws to represent him anymore after applicant's mother failed to pay him representation fees. That the 25 days granted was waste in vain. Now, the applicant fronted this application again seeking the compassion of this court to allow him to brought his appeal out of statutory time. During the hearing of the application, the respondent was serviced by Mr. Michael Kayombo, Ms. Happiness Machage and Ms. Joyce Matimbwi, all State Attorneys whilst on the other hand the applicant fended for himself. Page 2 of 5 In his submission, the applicant was of the few words, he prayed the court to adopt and consider his application so that he can appeal before this court. In response, Mr. Kayombo averred that the applicant had given 25 days to file the application since 10th July 2024 and ended up on 05th August 2024 but he didn't utilize the opportunity. He proceeded that, the applicant had a time to file his appeal with the help of prison officer as per section 363 of the Criminal Procedure Act. Referring to the case of Benjamin Amon vs Republic,

Criminal Application 115/11 of 2018 the council submitted that the applicant failed to account each day of delay. Mr. Kayombo argued further that, the applicant's contention that he had no advocate fee to file his application has no merit since the law dictate that the applicant who in remand may file his documents through prison officer. He prayed the application to be dismissed. In rejoinder, the applicant recounter that he was in prison and his family was handling the matter but his father died in the process and his family failed to communicate with the advocate that why he brought the application himself in this late time. Page 3 of 5 Following the short submission by both parties, I am now called upon to determine whether the applicant registered a sufficient reason for this court to grant him an extension of time to file his appeal. It is settled law that an application for extension of time will only be granted upon the applicant showing good cause for the delay. There is a plethora of authorities on this point. See Tanzania Coffee Board vs Rombo Millers Ltd, Civil Application No. 13 of 2015, Sebastian Ndaula vs Grace Rwamafa (legal personal representative of Joshua Rwamafa), Civil Application No. 4 of 2014, Yazid Kassim Mbakileki vs CRDB (1996) Ltd Bukoba Branch & Another, Civil Application No. 412/04 of 2018 and Tanzania Bureau of Standards vs Anitha Kaveva Maro, Civil Application No. 60/18 of 2017 (all unreported), to mention but a few. The applicant herein submitted that his matter was properly running before withdrawing by his counsel Mr. Mligo. And after that, taking into account that he was given 25 days to refile his appeal and he has an Advocate, the applicant was rest assured that his appeal will be brought back in good. But as bad luck would have it, the advocate denied his representation on fee issues of which the applicant's himself has no control of it since he was in prison. Page 4 of 5 Putting myself into the shoes of the applicant, I would have calmly relaxed since my matter was handled by an advocate who is a professional in a filed. And since his matter was handled by his family who are outside the prison, the applicant has minimal chances to interfere let alone to know in details what is going pertaining his case. The fact that the applicant is a prisoner, his action and movements solely depend on the mercy of the officer-in-charge of the prison and therefore it is unfair to expect much from a prisoner. See Maneno Muyombe & Another vs Republic, Criminal Appeal No. 435 of 2016 and Buchumi Oscar vs Republic, Criminal Appeal No. 295 'B' of 2011 (both unreported). In the event analysed above, I allow the application. The applicant is given 30 days from the date of this ruling to file his appeal. It is so ordered. M. L. KOMBA JUDGE 11th November, 2024 Page 5 of 5

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