

TANZANIA / JUDGMENT

RULING FAUSTINE MAHENDEJA SHITIKA Vs

COURT
TANZLIIDECIDED
10 November 2023

Source: media.tanzlii.org · Research copy typeset by Esheria. Not court-issued or certified.

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA MWANZA SUB- REGISTRY AT
MWANZA MISCELLANEOUS CRIMINAL APPLICATION NO. 29935 OF 2024 (Arising from Criminal
Case No. 000039138 of 2023 of Misungwi District Court) FAUSTINE MAHENDEJA SHITIKA
.....APPLICANT VERSUS THE REPUBLIC
..... RESPONDENT

RULING

5th March, 2025 E. L. NGIGWANA, J. This is an application for an extension of time to lodge an Appeal out of time against the decision of Misungwi District Court in Criminal case No.000039138 handed down on 23.4.2024. The application is by way of Chamber summons made under the provisions of section 361 (2) of the Criminal Procedure Act, [Cap 20 R.E 2022], and supported by an affidavit duly sworn by the applicant. The application is not opposed by the respondent / Republic. A brief background of this matter is to the effect that, the applicant herein was charged with the offence of Rape contrary to section 130 (1) (2)

- (e) and 131 (1) of the Penal Code, [Cap. 16 R.E 2022] where it was alleged that on the 10th day of November, 2023 at Misungwi Village within Misungwi 1 District in Mwanza Region, the applicant had sexual intercourse with one R. J (pseudonym), a girl child aged 11 years. The applicant denied the charge. After a full trial, he was convicted on 23.4.2024 and sentenced to serve a jail term of 30 years. He was aggrieved by both conviction and sentence and, therefore; filed a notice of intention to appeal on the 30th day of April, 2024, that is to say within 10 days from the date of judgment, but he delayed appealing within the prescribed time after the judgment and the proceedings being supplied to him on 1.5.2024 hence this application. The application was argued orally, whereas the applicant appeared in person, unrepresented, while Ms. Sarah Perias, learned State Attorney, appeared for the Respondent/ Republic. Submitting in support of the application, the applicant adopted his affidavit and prayers on the chamber summons to form part of his submission. The applicant stated that he was aggrieved by conviction and sentence, but he was late to file an appeal within time due to reasons that were beyond his control. He stressed that he could not file the same without being assisted by the prison officers, and whenever he approached them, he was told to be patient. He ended his submission by urging the court to grant this application. 2

On her side, Ms. Sarah Perias conceded to the applicant's application on the ground that the applicant had advanced sufficient cause for the delay to warrant the grant of the prayer.

Having heard submissions by the applicant and Ms. Sarah Perias, learned State Attorney for the respondent/Republic, the issue for determination is whether the applicant has been able to advance sufficient reason(s) for the delay. Section 361 (1) of the Criminal Procedure Act of 20 R: E 2022 provides that; "Subject to subsection (2), no appeal from any finding, sentence or order referred to in section 359 shall 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. 3 Section 361 (2) of the Criminal Procedure Act, Cap 20 R: E 2022 provides that; "The High Court may for good cause, admit an appeal notwithstanding that the period of limitation prescribed in this section has elapsed" In the matter at hand, as pointed out earlier, the judgment was delivered on the 23rd day of April, 2024, and the notice of intention to appeal was filed on the 30th day of April, 2024. In that respect, the notice of intention to appeal was filed within 10 days from the date of the judgment as per the dictates of section 361 (1) (a) of the Criminal Procedure Act, Cap. 20 R.E 2022]. However, there was non-compliance of section 361(1) (b) of the CPA because, after being supplied with a copy of the proceedings and judgment appealed against on the 1st day of May, 2024, no appeal was lodged by the appellant within 45 days. However, as per section 361 (2) of the CPA, the court may grant extension of time upon good cause for the delay being shown by the applicant. In other words, an application for extension of time is entirely in the discretion of the court to grant or refuse extension of time. 4 The applicant being a prisoner, is not a free agent who can freely make follow-ups on his matter or do what he wants to do without restrictions as observed in the case of Kabisa Sabiro and Two others Vs. Republic, Criminal Appeal No. 191 of 2010 CAT (Unreported), where the Court held that; "The appellants being in prison, it is to be expected that every action they take has to be through those under whose authority they are" Guided by the above authority, and having considered the reason demonstrated by the applicant for his failure to lodge his appeal within the prescribed time, I shake hands with the learned State Attorney that the applicant has managed to demonstrate sufficient cause for the delay. In the upshot, I allow the application. The applicant is hereby given twenty-one (21) days from the date of this ruling, within which to file the petition of appeal to this Court to challenge the decision of Misungwi District Court in Criminal Case No. 000039138 of 2023 delivered on 23rd day of April, 2024. It is so ordered. 5 DATED at MWANZA this 5th day of March, 2025. E.L. NGIGWANA JUDGE 6 Ruling delivered this 5th day of March, 2025 in the presence of the applicant in person, Ms. Sarah Perias, learned State Attorney for the Republic, and Ms. Gladness Mnjari, RMA. E. L. NGIGWANA JUDGE 5.3.2025 7

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE https://media.tanzlii.org/media/judgment/338724/source_file/5354d98ba87cfa8b/RULING_-_FAUSTINE_MAHENDEJA_SHITIKA_Vs._R..pdf

CASE PAGE <https://chat.esheria.ai/case-law/tanzania/faustine-mahendeja-shitika-v-the-republic-extensionoftime-tanzlii-2023--6a3ea5243b1caa912981a627>

Prepared on 14 October 2026 · Esheria