

TANZANIA / JUDGMENT

20100215 TZHC Dodoma

COURT
TZHCDECIDED
15 February 2010

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IN THE HIGH COURT OF TANZANIA ✓ / "< AT DODOMA . . . / " w~ ·
~ . Y Misc. CRIMINAL APPLICATION NO. Gs OF 2009 · (Originating from the District Court of
Kondoa Criminal Case No. 515 OF 2007) HAMIDU HASSAN APPLICANT VERSUS THE
REPUBLIC RESPONDENT

RULING

I • The applicant herein was convicted and sentenced to thirty (30) years imprisonment and twelve (12) strokes of a cane for the offence of Unnatural Offence contrary to section 54 (1) of the Sexual offences (Special Provisions) Act No. 4 of 1998. This was on 4/12/2007. The I • - appli_cant was not satisfied with the trial Court's decision. However, he r found himself out of time to appeal against that decision. The applicant• has therefore brought this application to be allowed to file notice of intention to appeal and petition of appeal out of tim.e. !he application is supported by the affidavit sworn by the applicant. 1 ., Both in his affidavit and submission before me the applicant's main reason for the delay to file notice of intention to appeal and petition of appeal was said to be the Prison authority. . I That, soon after the applicant was booked in the Prison, he expressed his desire to appeal and left his notice of intention to appeal with the Kondoa Prison authority for the same to be forwarded to Court. That, he learnt later that the notice was not filed and therefore found himself out of time to appeal. Thus, it was ,i the applicant's contention that it was the Prison authority which was to blame for his delay, him being under captivity. In opposing this application, Ms Mdulugu Learned State Attorney submitted that there was no sufficient reasons upon which the same could be allowed. That, the applicant took a very long time more than a year before he filed the application after his conviction. That, the applicant ought to have annexed his notice of intention to. T appeal he purported to have signed at Kondoa Prison. At this point, I find the issue to be decided to be whether this app!ication can be granted. I agree with the applicant that being a person under captivity he was dependent on the Prison authority to process his appeal papers and forward them to Court. Since the applicant was transferred to Isanga Prison from Kondoa Prison, the time lost before he filed this 2 ,I application was not inordinately long. His appeal papers• might have been lost or misplaced in the process. In th~ same vein, the applicant could not be expected to annex a copy of the notice of intention to appeal since he supposedly left the same with the Kondoa Prison authority for the requisite action. For the foregoing, I find that the applicant has advanced sufficient reasons for his delay to file notice of intention to appeal and petition of

appeal. The application is thus granted. The applicant should file notice of intention to appeal and petition of appeal within fourteen (14) days from today. • , AT DODOMA. 15/2k2010.

Applicant: Present. For Respondent: Mr Kirumbi State Attorney. c/c: Ms Komba. 3

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