

TANZANIA / JUDGMENT

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11 November 2024

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THE UNITED REPUBLIC OF TANZANIA JUDICIARY IN THE HIGH COURT OF TANZANIA MBEYA SUB REGISTRY AT MBEYA MISC. CRIMINAL APPLICATION NO. 29899 OF 2024 (Originating from the decision of the High Court of Tanzania at Mbeya Sub -Registry in Criminal Appeal No. 143 of 2023) IBRAHIM MUNDO..... APPLICANT VERSUS THE REPUBLIC.....RESPONDENT

RULING

11 November 2024 & 11 November 2024 SINDA, J.: The applicant has brought this application under section 361 (2) of the Criminal Procedure Act, Cap 20 R.E 2022 (the CPA). The applicant prays for the following orders:

- (i) That-this Hon. Court may be pleased to grant the applicant extension of time to file notice of intention to appeal out of time. (ii) That-any other relief as this hon. Court may deem fit to grant. 1 The chamber application is dully supported by an affidavit sworn by the applicant. The applicant has alleged to have been convicted for offence of stealing contrary to section 258 (1) and 265 of the Penal Code Cap 16 R.E 2002 (the Penal Code) and sentenced to serve four years in prison. At the hearing, the applicant appeared in person and unrepresented. The respondent was represented by Ms. Upendo Lyimo, learned State Attorney. The applicant briefly prayed the court to adopt his reasons set forth in his affidavit. Ms. Lyimo did not object the application. Having considered submissions of both parties and examined the grounds stated in the applicant's affidavit, the question is whether there is any justification for this court to exercise its discretion under section 361 (2) of the CPA. The said provision states that: "The High Court may, for good cause, admit an appeal notwithstanding that the period of limitation prescribed in this section has lapsed" From the record it is clear that failure to lodge the notice of intention to appeal and appeal on time was beyond the control of the applicant. The applicant received the High Court order on 15 July 2024. Thus, the failure to lodge the notice of intention to appeal and appeal on time. 2 That being the case and considering that the applicant is currently serving time in prison, he has no control over his affairs. It has been decided in the number of cases that being in prison, the applicant loses control of the appeal process thus amounting to sufficient cause for the delay. See: Buchumi Oscar vs Republic, Criminal Appeal No. 295 "B" of 2011 (CAT, unreported) William Ndingu @ Ngoso vs Republic, Criminal Application No.3 of 2014 (CAT,

unreported) and Maneno Muyombe and Another vs Republic, Criminal Appeal No. 435 of 2016. As a result, I find applicant advanced the good cause for delay. I grant the application. The applicant is to file a notice of intention to appeal and the appeal to the Court of Appeal of Tanzania within 30 days from the date of this Ruling. DATED at MBEYA on this 11 day of November 2024. A. A. SINDA JUDGE 3

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