

TANZANIA / JUDGMENT

Mwemelani Hamisi vs

COURT
TANZLIIDECIDED
4 April 2025

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THE UNITED REPUBLIC OF TANZANIA JUDICIARY IN THE HIGH COURT OF TANZANIA
MOROGORO -SUB REGISTRY AT MOROGORO MISC. CRIMINAL APPLICATION NO. 7401 OF 2025
(Arising from Criminal Case No. 1292/2024 in the District Court of Kilosa at Kilosa) MWEMELANI
HAMISI.....APPLICANT VERSUS THE
REPUBLIC.....RESPONDENT

RULING

4 April 2025 & 4 April 2025 SINDA, J.: The applicant brought this application under Section 361(2) and 363 of the Criminal Procedure Act, Cap 20 R.E. 2022 (the CPA). The applicant prays for the following orders:

- (i) That- the Hon. Court may be pleased to grant the applicant leave for an extension of time within which to lodge a notice of appeal out of time in criminal case no. 1292 of 2024. 1 (ii) That-any other relief as this Hon. Court may deem fit and just to grant. An affidavit sworn by the applicant duly supports the chamber application. The applicant has alleged to have been convicted for the offence of trafficking in narcotic drugs contrary to section 15 (A) (1) and
- (2) (c) of the Drugs Control and Enforcement Cap 95 R.E. 2019 and sentenced to serve 4 years imprisonment. At the hearing, the applicant appeared in person unrepresented. The respondent was represented by Ms. Jacqueline Nyoka, State Attorney. The applicant briefly prayed that the court adopt the reasons outlined in his affidavit. Ms. Jacqueline Nyoka did not object to the application. The applicant stated in her affidavit that she was transferred to another prison before lodging the notice of intention to appeal, following the construction of the women's prison facility at the remand prison in Morogoro, which made it difficult for her to lodge the notice of appeal within the prescribed time. She prayed the court to allow his application and grant the extension of time to file a fresh notice of appeal and petition of appeal. On the other hand, the respondent opted not to file a counter-affidavit. 2 Having considered the 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" According to the record, it is clear that the petition of appeal was lodged late with the court due to a transfer to another prison. As a

result, she was unable to file a notice of appeal within the prescribed time. That being the case, and considering that the applicant is currently serving time in prison, she has no control over her affairs. The filing was at the mercy of the prison authority. In several cases, it has been determined that being in prison renders the applicant unable to control the appeal process, thereby constituting 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. 3 As a result, I find that the applicant has advanced a good reason for the delay. I grant the application. The applicant is to file a notice of appeal and a petition of appeal within 21 days from the date of this Ruling. DATED at MOROGORO on this 4 Day of April 2025. A. A. SINDA JUDGE 4 April 2025 4

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Prepared on 12 October 2026 · Esheria