

TANZANIA / JUDGMENT

Phinius Respicius Ruling

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27 March 2025

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA (MOROGORO SUB-REGISTRY)
AT MOROGORO CRIMINAL APPLICATION NO. 2849 OF 2025 PHINIUS RESPICIUS
..... APPLICANT VERSUS
REPUBLIC..... RESPONDENT

RULING

27/03/2025 KINYAKA, J.: In Criminal Case No. 12 of 2023 before the District Court of Morogoro hereinafter, the “trial court”, the applicant, Phinius Respicius was convicted of the offence of Grave Sexual Abuse contrary to section 138C (1)(a) and (2)(b) of the Penal Code, Cap. 16 R.E. 2022 and sentenced to serve 20 years’ imprisonment in jail. Dissatisfied with the decision of the trial court, he intends to assail the same by way of appeal. Quite unfortunate for him, the time within which to do so is not in his favour. Still interested on pursuing his intended appeal, the applicant preferred the instant application under section 361 (2) of the 1 Criminal Procedure Act Cap. 20 R.E. 2022 hereinafter, the “CPA” imploring this Court to extend time for him to file notice of appeal and an appeal to this Court. The application was supported by an affidavit deposed by him. The respondent, upon receiving the applicant's application did not file a counter affidavit to oppose the application. The applicant, stated in his affidavit that the reason for his inaction was due to delays in receiving copies of the judgment and proceedings related to the impugned decision. Additionally, he stated that the notice of appeal he prepared and submitted to the admission office of Morogoro Remands Prison, was not filed in this court, and he was later informed that the notice was nowhere to be seen. At the hearing of the application, Mr. Shaban Kabelwa, learned State Attorney who appeared for the Respondent did not resist the application. The applicant on the other hand, appeared personally and unrepresented. He made a prayer for his application to be granted for him to file notice of appeal and petition of appeal. Having heard the parties, I am called to determine whether the applicant has advanced sufficient cause to move the Court to exercise its discretion as 2 provided for under section 361 (2) of the CPA. The provision confers the High Court with the said discretion in the following terms: “The High Court may, for good cause, admit an appeal notwithstanding that the period of limitation prescribed in this section has elapsed.” Having the above authority in mind, I am also aware to the position of the law that court can extend time where sufficient reasons are given, the applicant has accounted for all period of delay, the delay is not inordinate, and that there is no demonstration of apathy or negligence or sloppiness on the part of the applicant. [See, for instance the decision

of the Court of Appeal in Lyamuya Construction Ltd versus Board of Trustees of Young Christians Women of Tanzania, Civil Application No. 2 of 2010]. However, I firmly believe that relaxation of the said factors is inevitable when an applicant for an extension of time to appeal is imprisoned or confined. My stance is influenced by the reality that while imprisoned, an inmate lacks control over matters that extend beyond the prison environment. In this, I am persuaded by the position of the Court of Appeal in the case of Maneno 3 Muyombe & Another v. Republic, Criminal Appeal No. 435 of 2016

[2019] TZCA 260 (23 August 2019) where the Court categorically stated: “Being inmates serving time in prison, the appellants invariably had no control over their affairs and that they were necessarily at the mercy of the Officer-in-Charge of their prison, as it were. In this regard, it was unfair to expect too much from them.” Given the fact that the applicant was unable to oversee his affairs, including following up on the filing of the notice of appeal, and considering that the applicant failed to get copies of the proceedings and judgement necessary for preparation of the intended appeal on time, I firmly hold that the applicant has provided sufficient cause for this Court to utilize its discretion under section 361 (2) of the Criminal Procedure Act, Cap. 20 R.E. 2022 to enlarge time for the applicant to take the necessary action upon his dissatisfaction with the decision of the District Court of Morogoro in Criminal Case No. 12 of 2023. In consequence, the application is allowed. The applicant is granted leave to lodge notice of appeal within ten days and his intended appeal within forty- five from the date of delivery of this ruling. It is so ordered. 4 DATED at MOROGORO this 27th day of March 2025. H. A. KINYAKA JUDGE 27/03/2025 5

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