

TANZANIA / JUDGMENT

salimu athumani vs republic

2010 tzhc 281 19 february 2010

COURT
TZHCDECIDED
19 February 2010

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IN THE HIGH COURT OF TANZANIA AT TANGA MISC. CRIMINAL APPLICATION NO.8 OF 2009
(Originating from High Court Tanga, Cr.App.No.19/2006, ORG. Cr.C.38/2005Handeni District
Court) SALIMU ATHUMANI..... APPLICANT VERSUS THE
REPUBLIC.....RESPONDENT Date of last order: 17/11/2009 Date of Ruining:
19/2/2010

RULING

Mussa, 3; This application has, to its background, Criminal Case No.38 of 2005; instituted in the District Court of Handeni. The applicant was arraigned there, in the course of which, he was convicted for rape, contrary to sections 130(2)(e) and 131(1) of the penal code, chapter 16 of the laws. Upon conviction, he was sentenced, to 30 years imprisonment. The applicants' appeal to this court was dismissed in its entirety with an additional misfortune of his being ordered to be subjected to a corporal punishment of twelve strokes of a cane. The applicant was present at the time when this court handed down the dismissal (Shayo, J;) on the 13th April, 2007. The applicant now applies for extension of time within which to prefer an appeal to the Court of Appeal. The application is by chamber summons taken out by the applicant in terms of section 11(1) of the Appellate Jurisdiction Act. The same was, seemingly, filed on the 29th July 2009 in the company of an affidavit, again, sworn by the applicant. At the hearing, the applicant, unrepresented, fully adopted his grounds as contained in the affidavit, without more. For the Republic, Miss Mkonongo vigorously opposed the application for not yielding up sufficient cause. Learned state attorney additionally suggested that there is not even likelihood that the appeal, if admitted, will be successful. Taking a glance at the applicant's affidavit, what is of relevancy^ there is his claim about being denied prompt and timely assistance from prison authorities. There was no further elaboration beyond this grievance. Speaking of the grievance, it is a common one, much as it is frequently raised by convicts but; often a time, such is, unfortunately, a complaint easily pronounced than quantified. True; a convict is entirely dependent upon the good offices of prison authorities whom are required, by statute, to prepare whatever documents as may be required in the presentation of an appeal. Granted further; that there may be cases whereof a delay is occasioned by prison authorities, in a manner, beyond the control of a convict; to which courts have tended towards a favourable approach. In all such cases, there would be a factual

foundation, little be it, with which to ground a finding that the prisoner made some prompt action and; that the delay was through no fault of his/hers. It would have made the whole difference, for instance, if prison authorities were involved into explaining here that there was prompt instruction from the convict; of which was delayed by, say, insufficient typing facilities and what not. Without the slightest of a detail to that effect, one may scarcely comprehend a delay, such as the one at hand, that goes well beyond two 2 years. Quite apart, as hinted upon by learned state attorney, it was not, in the least, suggested and; indeed, there is no likelihood that the appeal, if admitted, would be involving. To this end, this application fails and is, accordingly, dismissed. It is so ordered. 19/02/2010 Coram - Mussa, J; Applicant: present For the respondent; miss Kato, state attorney.

- Ruling delivered in the presence of the parties. 3

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