

TANZANIA / JUDGMENT

2

COURT
TANZLIIDECIDED
14 January 2025

Source: media.tanzlii.org · Research copy typeset by Esheria. Not court-issued or certified.

THE UNITED REPUBLIC OF TANZANIA JUDICIARY IN THE HIGH COURT OF TANZANIA MBEYA
SUB - REGISTRY AT MBEYA MISC. CRIMINAL APPLICATION NO. 687 OF 2025 (Originating from
the District Court of Mbeya at Mbeya in Criminal Case No. 154 of 2022) SHAFII
KATAWALE.....APPLICANT VERSUS THE
REPUBLIC.....RESPONDENT

RULING

14 January 2025 & 14 January 2025 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 Honorable Court be pleased to grant the applicant leave for an extension of within which to lodge notice of appeal and petition of appeal out of time in Criminal Case No. 154 of 2022. 1 (ii) Any other relief as this Honorable Court may deem fit and just to grant. The chamber application is dully supported by an affidavit sworn by the applicant. The applicant has alleged to have been convicted for the offence of burglary and the offence of stealing under section 294 (1) (a) and 265 of the Penal Code, Cap 16, R.E 2022 and sentenced to serve five (5) years imprisonment for each count and to run concurrently. At the hearing, the applicant appeared in person virtually and was unrepresented. The respondent was represented by Mr. Salmin Zuberi, Learned State Attorney. The applicant briefly prayed the court to adopt his reasons set forth in his affidavit. Mr. Zuberi did not object to the application. The applicant stated that the trial court's judgment was delivered on 16 April 2024. On the same day he prepared the notice of appeal and handed it to the prison authority to transmit the same to court. He was transferred to Songwe farm prison on 18 April 2024. He received the proceedings and the judgment to prepare the petition of appeal on 6 July 2024. He then discovered that the notice of appeal was absent in his prison file. Therefore, he could not file his appeal on time. He emphasized that the 2 delay was not his fault as it was beyond his control. On the other hand, the respondent opted not to file the counter affidavit. 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” That being the case and considering that the applicant is currently serving time in prison, he has no control over his affairs. The filing was at the mercy of the prison authority. It has been decided in a 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. 3 As a result, I find the applicant advanced good cause for the delay. I grant the application. The applicant is to file a notice of appeal and petition of appeal within 45 days from the date of this Ruling. Dated at Mbeya on this 14 day of January 2025. A. A. SINDA JUDGE 4

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE	https://media.tanzlii.org/media/judgment/324943/source_file/463ad843db2bcab8/2._Shafii_Kitawale_v_R_-.pdf
CASE PAGE	https://chat.esheria.ai/case-law/tanzania/shafii-katawale-v-the-republic-extensionoftime-tanzlii-2025

Prepared on 14 October 2026 · Esheria