

**IN THE COURT OF APPEAL OF TANZANIA
AT IRINGA**

IR. CRIMINAL APPLICATION NO.1 OF 2008

**MARTIN SWAI APPLICANT
VERSUS**

**THE REPUBLIC RESPONDENT
(Application for Extension of time to lodge the Notice of
Appeal out of time from the decision of the
High Court of Tanzania at Songea)**

(Manento,J.)

**dated 13th day of November, 2002
in
Criminal Appeal No.53 of 2000**

ORDER

OTHMAN,J.

The applicant seeks an extension of time within which to lodge his notice of appeal out of time against the decision of the High Court (Kaganda,J.) delivered on 1.12.2005 whereby the learned judge rejected his application for filing a notice of appeal to the Court of Appeal out of time in respect of the judgment in High Court Criminal Appeal No. 53 of 2000 delivered by Manento,J. (as he then was) on 13.11.2002. The application is supported by the applicant's affidavit deposed on 21.07.2008.

The applicant, a layman, and unrepresented could not say much. He relied mostly on his supporting documents. Mr. Ntwina, learned Senior State Attorney for the respondent Republic, apart from pointing out the defect in paragraph 6 of the applicant's affidavit which contained a prayer disallowed by Order 19, Rule 3 of the Civil Procedure Code, 1966 had no objection to the application. He submitted that under Rule 44 of the Court of Appeal Rules, 1979 this court in its discretion and *suo motu* can entertain the application as in its particular circumstances it would not be desirable and convenient for the applicant to be heard again before the very High Court that rejected his earlier application for an extension of time within which to file a notice of appeal out of time in respect of the decision of Manento, J. Citing **R. V. Yona Kaponda** (1985) TRL 84 and at P.87 he submitted that this Court in the present circumstances and bearing in mind the trial Court's non compliance or otherwise with court procedures in the conducting the *voire dire* examination which raises an arguable point of appeal can extend time as applied for.

On a careful consideration of the whole issue and taking into account the chequered history of this matter, the custodial conditions in which the applicant has been since 10.12.2005 in Songea, Mbeya, Dar es salaam and Iringa and his dependency on prison authorities to assist him with court formalities and procedures; the points raised by Mr. Ntwina, concerning procedural irregularities or otherwise in the judgment rendered on 13.11.2002 that merit the attention of the Court of appeal and the seriousness the offence of rape c/s 131 (1) of the Penal Code Cap. 16 R.E. 2002 that the application was charged with and convicted and in the interest of justice, reasons which in my considered view cumulatively constitute sufficient reasons to warrant an extension of time, I would be inclined and hereby do exercise my discretion under Rules 8 and 44 of the Court of Appeal Rules, 1979 to grant an extension of time for the applicant to file his notice of appeal in respect of decision of the High Court rendered on 1.12.2005 out of time. This is to be done within 45 days of the delivery of this Ruling. It is so ordered.