

IN THE HIGH COURT OF TANZANIA

AT DAR ES SALAAM

MISC COURT MARTIAL APPL 11 of 2008

CORAM-SHANGWA, J., WAMBURA, J., JUMA, J.

1. P6587 MAJ LH CHALE

2. MT 23463 SGT SHAWAZI NALIHINGA..... APPLICANTS

VS

THE JUDGE ADVOCATE GENERAL

RESPONDENT

RULING

JUMA. J.

On 21 February, 2008, P6587 Major Chale and MT 23463 SGT Shawazi Nalihinga (applicants herein) filed an application by way of chamber summons to seek an extension of time to enable the applicants to deliver their Statement of Appeal to the Office of the Judge Advocate General and in the process set into motion their appeal against their conviction and sentence by the Court Martial. To move this Court, the applicants relied on the Ruling of this Court (Mlay, Oriyo and Rugazia JJJ) in the Court Martial Criminal Appeal Number 2 of 2003 wherein the applicants were informed of their liberty to apply for enlargement of time within which to forward their appeal to the Judge Advocate General. The said Ruling was delivered on 31-07-2006.

The application is supported by two sets of affidavits sworn by the applicants. In their respective affidavits, the applicants deposed that on 25-06-2002 they were convicted by the General Court Martial of the offences of stealing and obtaining goods by false pretences. Upon their conviction, each applicant was sentenced to serve five year prison term. A day later after their sentencing, the applicants presented their respective notices of intention to appeal to the Office of the Judge Advocate General. According to the applicants, the Office of the Judge Advocate General acknowledged receipt of the notice of their intention to appeal. It did so on 27-06-2002. Later on 19-05-2003, the applicants received proceedings from the Court Martial. These proceedings enabled the applicants to prepare their Statement of Appeal against their conviction and sentence.

Instead of forwarding the Statement of Appeal to the Office of the Judge Advocate General within 21 days as the law prescribes, on 09-06-2003 the Prison Officers forwarded the same to the High Court Registry. As a result on 31-07-2006 this Court (Mlay, Oriyo and Rugazia JJJ) in the Court Martial Criminal Appeal Number 2 of 2003 sustained a preliminary objection that the appeal before it was defective because it was not forwarded to the Judge Advocate General as required by Section C.144 (4) of the **Code of Service Discipline (First Schedule to the National Defence Act)**.

Through a notice of preliminary objection the respondent Judge Advocate General has opposed this application for enlargement

of time. Respondent submitted that the applicants took no step to prosecute their appeal between 31-07-2006 when this Court in Court Martial Criminal Appeal Number 2 of 2003 gave them the liberty to apply for enlargement of time and on 21-02-2008 when the applicants finally filed this application seeking the enlargement of time.

According to the respondent, this application does not fall within principles wherein this Court can allow an enlargement of time. These principles are according to the respondents expounded in Regulation 101.08 of **Code of Service Discipline, GNs 258/1967 and 658/1986** which prescribes "to follow the course that seems best calculated to do justice," and the principle of "sufficiency of reasons" underscored in the Court Martial Appeal Court decisions in **P1271 Lt. Colonel ML Akili & P7040 Lt MN Maisa VS DPP, Miscellaneous Criminal Cause No. 08 of 1992 [Rubama, Bahati and Mkude JJJ]** and **P 6752 Lt. RO Mbaga vs. Judge Advocate General, Court Martial Appeal Case No. 1 of 2003 [Chipeta, Bubeshi and Ihema JJJ]**.


The law is settled that in applications like this one, courts invariably exercise their judicial discretion. Two principles will guide our judicial discretion in the determination of this application. The first principle is the need to do justice to both the opposing parties. The second principle centres on the existence of sufficient reasons explaining the delay in taking action which is required to be taken in a given case. The first principle is self explanatory. Let us focus

our mind on the second principle whether or not there are sufficient reasons for the delay.

It appears to us that it took long between 31-07-2006 when this Court struck out the applicants' Court Martial Criminal Appeal No. 2 of 2003 and on 21-02-2008 when the applicants filed their chamber application to enlarge time to file an appeal. With due respect, the applicants have not furnished sufficient reasons to explain why it took 18 months and 21 days for them to lodge their chamber application seeking an extension of time after being granted liberty to do so.

In **Dr Ally Shabhay v. Tanga Bohora Jamaat** 1997 TLR 305 (CA), it was held that those who come to court must not show unnecessary delay in doing so; they must show diligence. The applicants have not shown the diligence manifesting their desire to lodge an appeal after being granted liberty to apply for the enlargement of time to do so.

From the foregoing reasons, we are of the opinion that the applicants have failed to show reasons let alone sufficient reasons why they delayed in filing their application for extension of time to lodge their appeal. For these reasons, we uphold the Respondent's Preliminary Objection and strike out the applicants' application.



A.F.K. Shangwa
JUDGE
01-11-2010


S.A.N. Wambura
JUDGE
01-11-2010

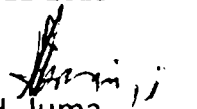
I.H. Juma
JUDGE
01-11-2010

DELIVERED in open Court this 1st day of November, 2010 in the
presence of the Applicants and the Respondent.




A.F.K. Shangwa
JUDGE
01-11-2010


S.A.N. Wambura
JUDGE
01-11-2010


I.H. Juma
JUDGE
01-11-2010