

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**IN THE DISTRICT REGISTRY OF MUSOMA**

**AT MUSOMA**

**CONSOLIDATED Misc. CRIMINAL APPLICATIONS No. 44 & 45 OF 2022**

*(Arising from the District Court of Serengeti at Mugumu in Economic Case No. 144 of 2019)*

**1. MNANKA SARI MATIKO @ BISARE**  
**2. SARYA SARYA @ MATIKO** } ..... **APPLLCANTS**

**Versus**

**REPUBLIC** ..... **RESPONDENT**

**RULING**

07.02.2022 & 07.02.2022

F.H. Mtulya, J.:

On 26<sup>th</sup> November 2020, the **District Court of Serengeti at Mugumu** (the district court) delivered its decision in **Economic Case No. 144 of 2019** (the case) and convicted Mnanka Sari Matiko @ Bisare and Sarya Sarya @ Matiko (the applicants) of the offence of unlawful entry into the game reserve, unlawful possession of weapons in the game reserve and unlawful possession of the Government trophies and were both sentenced to serve twenty (20) years imprisonment.

The applicants were not satisfied with both the conviction and sentence hence upon arrival at Mugumu Prison in Serengeti District, they were informed by prison officials on their right to appeal hence

preferred a notice of intention to appeal (the notice) before the prison official to be filed at this court within ten (10) days as per requirement of the law in 361 (1) (a) of the **Criminal Procedure Act** [Cap. 20 R.E. 2019] (the Act). However, the prison authorities had failed to file the same within time in this court.

Unaware of the delay in the notice, on the 4<sup>th</sup> January 2021, the applicants had preferred **Consolidated Criminal Appeal No. 23 & 24 of 2021** (the appeals) against the Republic in this court to dispute the decision of the district court. However, the appeals were struck out on the 11<sup>th</sup> May 2021 for want of notice of appeal filed within time.

The applicants, being vigilant in accessing this court, knocked the doors of this court again on the 8<sup>th</sup> July 2021 seeking for enlargement of time to file an appeal in this court in two (2) different applications namely, **Miscellaneous Criminal Application No. 44 & 45 of 2021**. When the applications were called today for hearing, the applicants prayed for consolidation of the applications and were granted without any protest from learned State Attorney Ms. Agma Haule. Ms. Haule reasoned that the consolidation has merit as the dispute originated from one original case and the course will save time of this court and parties.

In their brief submission in favour of the application, the applicants submitted that they filed the notice within time, but prison authorities in Mugumu had delayed in filing the same to this court hence the appeals were struck out for want of time limitation in May 2021. The applicants submitted further that they were separated in two (2) different prisons of Mugumu and Tabora-B located at Serengeti District of Mara Region.

The materials registered by the applicants were protested by Ms. Haule contending they do not display good cause as per requirement of the law. To her opinion, the applicants have failed to account on every day of the delay as they had decision of this court since May 2021 and preferred the present applicant in August 2021. Ms. Haule contended further that the applicants have not attached affidavits of the prison authorities to justify their claims of the delay on part of the prison authorities.

According to Ms. Haule the applicants were negligent as the initial appeal was struck out for want of time limitation, but they delayed again for three (3) months to bring the present application in this court. To her opinion, this application must be dismissed for want of good reason and accountability on every day of the delay. Finally, Ms.

Haule cited the Court of Appeal decision in **Zuberi Nassor Moh'd v. Mkurugenzi Mkuu wa Shirika la Bandari Zanzibar**, Civil Application No. 93/15 of 2018, contending that applications for enlargement of time cannot be granted without production of good cause and accountability on every day of the delay.

I have had an opportunity to glance the record of this application, section 361 (2) of the Act and decision of the Court of Appeal in **Zuberi Nassor Moh'd v. Mkurugenzi Mkuu wa Shirika la Bandari Zanzibar** (supra). The law in section 361 (2) of the CPA allows this court to grant enlargement of time to applicants who produce good cause. However, the law is silent on what amounts to good cause.

The practice of this court and our superior court has been that applicants for enlargement of time are required to adduce sufficient reasons and account on every day of the delay in their applications (see: **Dar Es Salaam City Council v. Jayantilal P. Rajani**, Civil Application No. 27 of 1987, **Bushiri Hassan v. Latifa Lukio Mashayo**, Civil Application No. 3 of 2007 **Lyamuya Construction Company Ltd V. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010).

Ms. Haule in her submission in protest of the application cited the precedent in **Zuberi Nassor Moh'd v. Mkurugenzi Mkuu wa Shirika la Bandari Zanzibar** (supra), which at its page 9 invited the decisions in **Henry Mayuga v. TTCL**, Civil Application No. 8 of 2011 and **Samwel Sichone v. Bulebe Hamisi**, Civil Application No. 8 of 2015, and mentioned some of the factors to be considered in an applications like the present one to include: length of delay, reason of delay, the chance of success of the intended appeal and the degree of prejudice that the respondent may suffer.

In the cited decision of in **Zuberi Nassor Moh'd v. Mkurugenzi Mkuu wa Shirika la Bandari Zanzibar** (supra), the Court of Appeal dismissed the application with costs for want of sufficient reason. However, at page 9 of its decision the Court had put in place a very important clause that: *as what constitutes sufficient cause, it has been explained in most cases it depends on the circumstance of each case.*

In the present application, the applicants claim that they were in prison authorities in different prisons of Mugumu and Tabora-B and have shown that it was difficult to decide on their own volition in filing the notice. To my opinion, the applicants have displayed vigilance in following up their appeal since day one when they were committed to

the prison to the date of filing this application. In any case, right to appeal is constitution right enshrined in article 13(6) (a) of the **Constitution of the United Republic of Tanzania** [Cap. 2 R.E 2002] for every unsatisfied disputant who may wish to enjoy the right. This court may not hesitate to cherish the right.

I understand Ms. Haule asked the applicants to account on every day of the delay. I am aware that is the position of established practice of this court and the Court of Appeal (**Bushiri Hassan v. Latifa Lukio Mashayo** (supra) and **Zuberi Nassor Moh'd v. Mkurugenzi Mkuu wa Shirika la Bandari Zanzibar** (supra). I am also conscious that applicants for enlargement of time cannot file applications for extension of time as and when they wish (**Bank of Tanzania v. Saidi Malinda & 30 Others**, Civil Ref. 3 of 2014).

However, I shall keep myself reminded of the general principle that every case is decided upon its peculiar facts (see: **NBC Limited & Another v. Bruno Vitus Swalo**, Civil Application No. 139 of 2019, **Richard Mbwana v. Joseph Mang'anya**, Misc. Land Case Application No. 2 of 2021, **Republic v. Ramadhani Mohamed Chambali**, Criminal Sessions Case No. 11 Of 2020). The present case is peculiar in its circumstances, and may invite peculiar interpretation. I think, in my considered opinion, persons under prisons authorities may be

considered differently from those enjoying freedom of liberty in civil courts. I am aware of a bundle of precedent of this court and Court of Appeal supporting the position (see: **Yusufu Hassan v. Republic**, Criminal Application No. 50/12 of 2017, **Dickson Prosper @ Mutabuzi v. Republic**, Misc. Criminal Application No. 22 of 2021, and **Saidi Ramadhani Ndevumbili v. Republic**, Misc. Criminal Application No. 13 of 2021).

Having said so, I think, this application has merit and the applicants may be granted leave to register their notice and petition of appeal in this court. Noting the applicants are presently in prison custody at Tabora-B in Serengeti District of Mara Region and we heard them through science conversations attached in this court at Musoma Municipality, I have decided to grant the applicants thirty (30) days leave to file notice of intention to appeal and forty five (45) days leave to file petition of appeal in this court without any further delay.

It is so ordered.



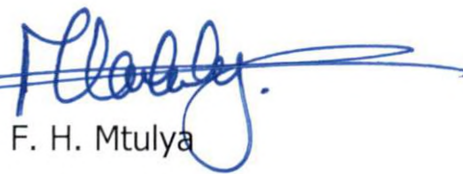
  
F. H. Mtulya

**Judge**

07.02.2022

This Ruling is delivered in Chambers under the seal of this court in the presence of the learned State Attorney, Ms. Agma Haule and in the presence of the applicants, Mnanka Sari Matiko @ Bisare and Sarya Sarya @ Matiko, through telephone conversations in Tabora-B Prison.



  
F. H. Mtulya

**Judge**

07.02.2022