

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE DISTRICT REGISTRY OF DAR ES SALAAM)

AT DAR ES SALAAM

MISC. CRIMINAL APPLICATION NO. 273 OF 2021

*(Coming from the District Court of Bagamoyo at Bagamoyo
in Criminal Case No. 273 of 2021).*

KHASSIMU ELIAS TELEKEZA @ TAWILE 1ST APPLICANT

RASHID RAMADHANI MRISHO 2ND APPLICANT

VERSUS

THE REPUBLIC RESPONDENT

RULING

7th, & 11th February, 2022

ISMAIL, J.

At the instance of the applicants, this Court is moved to grant an extension of time for filing a notice of intention to appeal to this Court. The intended appeal is against the decision of the District Court of Bagamoyo at Bagamoyo, in Criminal Case No. 342 of 2020. The culmination of this decision was to convict and sentence the applicants to imprisonment for a term of 20 years. The offence charged was Hosting Illegal Immigrants, contrary to section 145 (1) (b) (g) and 2 of the Immigration Act, Cap. 54 R.E. 2019.

The application, preferred under section 361 (2) of the Criminal Procedure Act, Cap. 20 R.E. 20, is supported by the applicants' joint affidavit in which the grounds for the objection are set out. These grounds are gathered from paragraphs 5 and 6 of the affidavit in which they aver that the applicants expressed their intention to institute an appeal against the decision, and handed their notice to Prison officers a copy thereof was not returned to them by the trial court. That notwithstanding, the applicants stated, no appeal was filed because copies of the proceedings and judgment were not supplied to them.

The respondent, though served with the application, did not file any counter-affidavit. Ms. Laura Kimario, learned State Attorney who represented the respondent intimated that she did not wish to file any counter-affidavit, as she was not opposed to the application.

For their part, the respondents had nothing useful to add. They prayed that their application be granted as prayed.

The obvious question at this point is whether the applicants have put some material on which to grant the application. This question considers the fact that the trite position is that an extension of time can be granted where a party seeking it adduces sufficient reason or good cause that prevented him from acting within the time prescription (See: ***Benedicto Mumello v.***

Bank of Tanzania [2006] 1 EA 227; and **Lyamuya Construction Company Limited v. Registered Board of Trustees of Young Women's Christian Association of Tanzania**, CAT-Civil Application No. 2 of 2010 (unreported)). The uniform message in both of the cited decisions is that extension of time is in the discretion of the Court and the litigant has to lay the basis for it. This position was amplified in the persuasive decision of the Supreme Court of Kenya in **Nicholas Kiptoo Arap Korir Salat v. IEBC & 7 Others**, Sup. Ct. Application 16 of 2014, in which it was stated as follows:

"Extension of time being a creature of equity, one can only enjoy it if [one] acts equitably: he who seeks equity must do equity. Hence, one has to lay a basis that [one] was not at fault so as to let time lapse. Extension of time is not a right of a litigant against a Court, but a discretionary power of courts which litigants have to lay a basis [for], where they seek [grant of it]."

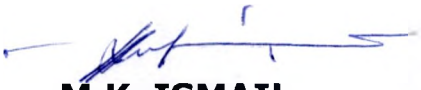
An unfleeting glance at paragraphs 5 and 6 of the affidavit brings out a compelling impression that the delay in instituting the appeal process was not the applicant's own creation. It was externally influenced arising out of poor handling of their notices of appeal and the accompanying documents. There is no evidence that the delay in taking action was caused by their own apathetic conduct or sloppiness. Moreover, the delay in taking action was

not inordinate. Consequently, I hold that sufficient cause has been advanced and this application succeeds, and the applicants are given fourteen (14) days within which to take necessary steps as they deem appropriate.

Order accordingly.

DATED at **DAR ES SALAAM** this 11th day of February, 2022.




M.K. ISMAIL
JUDGE