

IN THE HIGH COURT OF TANZANIA

AT SUMBAWANGA

**CONSOLIDATED MISC ECONOMIC APPLICATION No 7, 8 AND
9 OF 2020**

(Originating from Court of Resident Magistrate of Katavi in Economic Case No 92
of 2016)

ASHIKENAZI S/O JOSHUA

SADOCK S/O GENDERO

FELIX S/O BUTOKE

..... **APPLICANTS**

VERSUS

THE REPUBLIC.....RESPONDENT

*(Application for extension of time to file notice of intention to appeal and petition
of appeal to this court from the decision of Resident Magistrate Court of Katavi)*

RULING

25th – 31st August 2020

MRANGO, J

This is a ruling in respect of applications made under **section 361(2) of the Criminal Procedure Act, Cap 20, RE. 2002**, by the applicants, **Ashikenazi S/O Joshua, Sadock S/O Gendero** and **Felix S/O Butoke** seeking leave for extension of time, which they be allowed to file notice of intention to appeal and appeal to this court outside statutory time required by law. The applications are supported by the affidavits

sworn, drawn and filed by the applicants themselves and that of the Officer Incharge of Sumbawanga Prison.

When the applications were called on for hearing, the applicants appeared in person, unrepresented; whereas, the respondent *cum* republic had legal services of Mr. Njoloyoto Mwashubila – learned senior state attorney. The hearing proceeded orally.

Mr. Njoloyoto Mwashubila – learned senior state attorney, prayed for the consolidation of three (3) applications No 07/2020, 08/2020 and 09/2020 for reasons that they all originated from one Economic Case No 92/2016 Katavi Resident Magistrate Court.

The applicants Ashikenazi S/O Joshua, Sadock S/O Gendero and Felix S/O Butoke conceded the prayer; therefore I consolidated all three (3) applications Misc Criminal Application No 07/2020, 08/2020 and 09/2020 on a single reason that they all originated from one Economic Case No 92/2016 Katavi Resident Magistrate Court as prayed.

In supporting applications, 1st Applicant Ashikenazi S/O Joshua, 2nd Applicant Sadock S/O Gendero and 3rd Applicant Felix S/O Butoke prayed for the court to adopt the affidavits lodged and had nothing to add.

In response Mr. Njologyoto Mwashubila – learned senior state attorney, supported the applications by the applicants, He said the applicants lodged applications under proper provisions of law and the reasons advanced are good and sufficient.

I have gone through this court's records and the respective submissions by both parties. The question for determination is whether the applicant has been able to advance sufficient reason for the delay.

It is a cardinal principle that when the time has expired, there must be explanation or material upon which the court may exercise its discretion to extend it. See decisions in the case of **Regional Manager Tanroads Kagera versus Rinaha Concrate Co. Ltd; Civil Application No. 96 of 2007 CAT, unreported and Godwin Ndeweri and Karoli Ishengoma versus Tanzania Indil Corporation (1995) TLR 200 and Republic versus Yona Kaponda and 9 others (1985) TLR 84.**

In the instant applications, the applicants through their averments in paragraph 2, 3 & 4 of the affidavits has advanced the reason for the delay being that, failure to lodge an appeal in time was out of their control as prisons whose depends on prison authority to lodge notice of appeal and petition of appeal, hence this application.

On his part, Mr. Njoloyoto Mwashubila, had no objection to the applications by the applicants as he informed the court that, the applicants have advanced sufficient reasons for the applications which entitled them to be granted the prayer.

As well these applications by the applicants are also supported by the supplementary affidavits of the Officer Incharge of Sumbawanga Prison, who supported what was stated by the applicants in their affidavits as to be true.

With that view, I find that the applicants have advanced good cause for the failure to appeal within prescribed period of time. For that reason, I allow the applications. The applicants are given a period of ten (10) days from today within which to file the notice of intention to appeal as well forty five (45) days within which to file petition of appeal to this court.

It is so ordered.




D. E. MRANGO

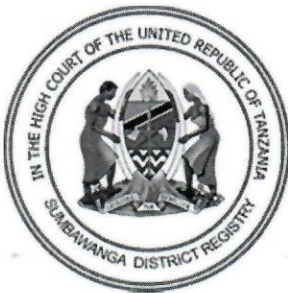
JUDGE

31. 08. 2020

Date - 31.08.2020
Coram - Hon. D.E. Mrango – J.
1st Applicant }
2nd Applicant } Present in persons
3rd Applicant }
Respondent - Ms. Irene Mwabeza – State Attorney
B/C - Mr. A.K. Sichilima – SRMA

COURT: Ruling delivered today the 31st day of August, 2020 in presence
of both the Applicants in persons and Ms. Irene Mwabeza –
Learned State Attorney for the Respondent/Republic

Right of appeal explained.




D.E. MRANGO
JUDGE
31.08.2020