

**THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE DISTRICT REGISTRY OF BUKOBA)**

AT BUKOBA

MISC. CRIMINAL APPLICATION No. 92 OF 2020

(Arising from the Resident Magistrates' Court of Bukoba at Bukoba (Extended Jurisdiction) in Criminal Application Case No. 12 of 2020 & District Court of Bukoba at Bukoba in Criminal Case No. 14 of 2016)

GADAFI ZUBAILI ----- APPLICANT

Versus

REPUBLIC ----- RESPONDENT

RULING

11/02/2021 & 22/02/2021

Mtulya, J.:

This is an application for enlargement of time preferred by Mr. Gadafi Zubaili (the Applicant) seeking for leave to lodge notice of intention to appeal and appeal out of time to contest a decision of the **Resident Magistrates' Court of Bukoba at Bukoba (Extended Jurisdiction) in Criminal Application Case No. 12 of 2020**. In order to move this court to decide in his favour, the Applicant registered the reason for the delay in Paragraph 3 and 4 of his Affidavit briefly that: *the applicant being dissatisfied with the decision filed notice of appeal through prison officer in time, [but] later it was revealed that the notice was neither filed nor admitted in court records due to personal neglect.*

When the Application was scheduled for hearing on 11th February 2021, the Applicant briefly stated that prisoners are under the control of

prisons authorities and their communications with outside world are through prisons authorities. However, on his part it was unfortunate that prisons admission department did not submit his notice of intention to appeal and appeal in court within time, though prepared within time. According to the Applicant, after the decision in **Criminal Application Case No. 12 of 2020** of the **Resident Magistrates' Court of Bukoba at Bukoba (Extended Jurisdiction)** delivered on 27th March 2020, he immediately prepared the notice and appeal on 14th April 2020 and submitted it to the admission department for registration in the Court of Appeal Registry of Bukoba at Bukoba.

This submission was not received well with Mr. Basilius Namkambe, learned Senior State Attorney, for the Republic. Mr. Namkambe decided to protest the Application arguing that the Applicant has not produced sufficient reason to persuade this court to grant the Application. In his opinion, the Applicant was supposed to register an affidavit of the prison officer who had received the notice and appeal within time to justify his allegation. Mr. Namkambe submitted further that even if the Applicant would have registered the same, he would have been required to account on every day of the delay. Finally, Mr. Namkambe stated that the Application lacks merit and in any case, the Applicant wants to challenge the decision in **Criminal Application No. 12 of 2020** of the

Resident Magistrates' Court of Bukoba at Bukoba (Extended Jurisdiction) which held that section 148 (5) (a) (iv) of the **Criminal Procedure Act [Cap. 20 R. E. 2019]** prohibits grant of bail to accused persons charged with the offence of terrorism.

On my part, I think, it is established law that applicants for enlargement of time must provide relevant materials to persuade courts in exercising their discretionary powers to decide in their favour (see: **Alliance Insurance Corporation Ltd v. Arusha Art Ltd**, Civil Application No. 33 of 2015; **Royal Insurance Tanzania Limited v. Kiwengwa Strand Hotel Limited**, Civil Application No. 116 of 2008; **Sebastian Ndaula v. Grace Rwamafa**, Civil Application No. 4 of 2014; and **NBC Limited & Another v. Bruno Vitus Swalo**, Civil Application No. 139 of 2009).

However, there are no pigeon holes on relevant materials established by our courts of record, High Court and Court of Appeal. That would have been easier for the courts to pinpoint the specific pigeon holes and determine applications brought before them. Our superior court in this country has already confirmed on the difficulties involved in determining the relevant materials (see: **Dar Es Salaam City Council v. Jayantilal P. Rajani**, Civil Application No. 27 of 1987 and **Oswald Masatu Mwizarubi v. Tanzania Processing Ltd**, Civil

Application No. 13 of 2010). In the precedent of **Oswald Masatu Mwizarubi v. Tanzania Processing Ltd** (supra), the Court of Appeal stated the following words:

*What constitutes **good cause cannot be laid down by any hard and fast rules**. The term good cause is a relative one and is dependent upon party seeking extension of time to provide the **relevant material** in order to move the court to exercise its discretion*

(Emphasis supplied).

The advice from our superior court in identifying relevant materials in an application for extension of time is to invite the general principle that every case has to be decided on its own peculiar facts. For instance, in the precedent of **NBC Limited & Another v. Bruno Vitus Swalo** (supra), it was stated at page 7 of the typed Ruling that:

*It is now settled that **in its discretionary powers, apart from a point of illegality where raised**, the court has to also consider such factors as the length of delay, the reason for delay, the degree of prejudice and whether or not the applicant was diligent. In applying those principles*

[the court must bear in mind]...the general principle that

every case is decided upon its peculiar facts

(Emphasis supplied).

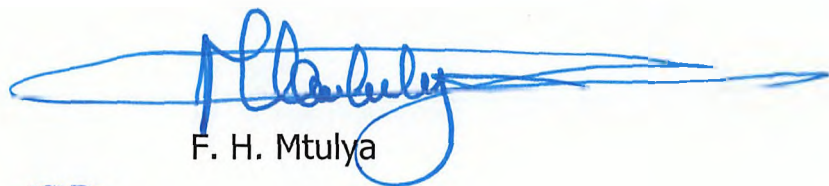
In the present Application, the Applicant registered a situation beyond his control as he is currently held under custody of prisons authorities and that accessing this court is beyond his control. From the practice of courts in commonwealth jurisdiction and in this State, factors beyond applicants control may be part of the relevant materials (see: **Eksteen v. Kutosi** [1951] 24 (2) K.L.R. 90; **Foreign Mission Board of Southern Baptist Convention v. Alexander Panomaritis** [1984] T.L.R 146; and **Benezeth Mwebesi & Two Others V. Baraka Peter**, Misc. Civil Application No. 46 of 2019). In any case, persons under control of prisons authorities, may be granted enlargement of time and precedents are plenty in this court and Court of Appeal (see: **Yusuph Hassan v. Republic**, Criminal Application No. 56/12 of 2017; **Amudy Kabwishukuru v. Republic**, Misc. Criminal Application No. 2 of 2020; and **Iman Gregory v. Rose Charles**, Misc. Criminal Application No. 15 of 2020).

However, as it was rightly submitted by learned Senior State Attorney, applicants who register applications for enlargement of time and assert delays on part of the prisons authorities or specific prison

officer, must attach sworn affidavit of the authorities or that specific officer who caused the delay. The importance of such practice, is to screen honest applicants who come to court in good faith from negligent applicants. In the present Application, the Applicant did not attach an affidavit from the prisons authorities or prison officer who delayed the appeal to substantiate his claim. Therefore, this court may not consider him in granting leave to access the Court of Appeal out of statutory time.

In the final analysis, I think, the Applicant did not registered relevant materials to persuade this court to determine this Application in his favour. The Applicant is not granted leave to register appeal out of statutory time before the Court of Appeal.

Ordered accordingly.




F. H. Mtulya



Judge

22/02/2021

This Ruling was delivered in Chambers under the seal of this court in the presence of the Applicant Mr. Gadafi Zubaili and in absence of learned State Attorneys for the Respondent.


 F. H. Mtulya
Judge
22/02/2021