

IN THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

(DISTRICT REGISTRY OF MBEYA)

AT MBEYA

CRIMINAL APPLICATION NO. 176 OF 2020

*(From the decision of the Resident Magistrates' Court for Mbeya at Mbeya
in Criminal Case No. 09 of 2019)*

RICHARD JOSEPH JACKSON.....1ST APPLICANT

DAVID RABI @ MWASHINANI.....2ND APPLICANT

ZUBERI MBOMA.....3RD APPLICANT

VERSUS

THE REPUBLIC.....RESPONDENT

RULING

Date of Hearing : 16/03/2021

Date of Judgement: 23/03/2021

MONGELLA, J.

The applicants are seeking to be granted extension of time within which to file notice of appeal and appeal out of time. During the hearing they appeared in person while the respondent was represented by Ms. Zena James, learned State Attorney.

During the hearing the applicants reiterated what is stated in their affidavit in support of the application. The reason for the delay they advanced was to the effect that there was delay in obtaining copies of judgment and proceedings. They said that the copies of judgment were



availed to them on 17th April 2020 while the copies of proceedings were availed to them on 05th June 2020. Thereafter, they filed applications in court but the same were returned to them by the registry office for being defective. It was until September 2020 when they managed to file this application.

On her part, Ms. James opposed the application. Considering the dates in which the applicants stated to have received the copies of judgment and proceedings, she argued that the applicants have not advanced any sufficient reasons for the delay. She contended that the record shows that the applicants prepared this application on 13th November 2020 and filed it in this court on 19th November 2020. It was thus almost five months that had elapsed and the applicants have not accounted for this further delay.

She challenged the contention by the applicants that they filed applications in this court but the same were returned for being defective. On this, she argued that these facts have not been stated in the affidavit in support of the application and they have not been proved. With these arguments she prayed for the application to be dismissed for lack of merit.

In rejoinder, the applicants briefly stated that the documents were prepared by prison officers and they had no idea of the defects. They prayed for the mercy of the court.

After considering the arguments by both parties I have to deliberate on whether the applicants have advanced sufficient reasons for the delay.



As much as it lies in the discretion of the court to grant extension of time, the grant has to be issued judiciously by considering the reasons advanced. The applicants in their affidavit claim to have delayed in obtaining copies of judgment and decree.

As stated by both parties, the copies of judgment were availed on 17th April 2020 and those of proceedings on 5th June 2020. This application, as per the records, was prepared on 13th November 2020 and filed in this court on 19th November 2020. Thus counting from 5th June 2020 to 19th November 2020 it makes more than six months that had elapsed, as argued by the learned State Attorney. It is trite law that for extension of time to be granted, the delayed days must be accounted for. See: **Bushiri Hassan v. Latifa Lukio Mashayo**, Civil Application No. 03 of 2007 (CAT-unreported) quoted in **Moto Matiko Mabanga v. Ophir Energy PLC, Ophir Services PTY LTD & British Gas Tanzania Limited**, Civil Application No. 463/01 of 2017.

In their submissions, the applicants claimed to have filed early the application but the same was returned for being defective. They also claimed that the whole process was handled by the prison department and they had no control of the process. In my opinion, this being a factual issue, it ought to have been stated in the affidavit in support of their application. The position of the law is that parties are bound by their own pleading whereas a party cannot bring un-pleaded matters of fact during the hearing. Doing that becomes an afterthought.



Under the circumstances, I agree with Ms. James that the applicants have not advanced sufficient reasons to warrant the grant of extension of time. They have failed to account for the delayed dates as required under the law. The application is therefore dismissed.

Dated at Mbeya on this 23rd day of March 2021

Shelle
L. M. MONGELLA

JUDGE

Court: Ruling delivered at Mbeya through video conference on this 23rd day of March 2021 in the presence of the applicant, and Ms. Xaveria Makombe, learned State Attorney for the respondent.

Shelle
L. M. MONGELLA

JUDGE



JAMHURI YA MUUNGANO WA TANZANIA
MAHAKAMA KUU YA TANZANIA
(MASJALA YA MAHAKAMA WILAYA MBEYA)
YA MBEYA

MAOMBI JINAI NAMBA 176 YA 2020

**(kutoka katika maamuzi ya mahakama ya hakimku mkazi Mbeya ya Mbeya
katika shauri la jinai No. 09 ya 2019)**

RICHARD JOSEPH JACKSONMLETA MAOMBI NO.1

DAVID RABI @ MWASHINANI.....MLETA MAOMBI NO.2

ZUBERI MBOMA.....MLETA MAOMBI NO.2

DHIDI

JAMHURI.....MJIBU MAOMBI

23/3/2021

MUHTASARI WA SHAURI

1. MAELEZO YA SHAURI KWA UFUPI

Mleta maombi aliomba kuongezewa muda ili alete nia ya kukata rufaa na rufaa nje ya muda.

2. UAMUZI WA MAHAKAMA

Maombi yalitupiliwa mbali

3. SABABU ZA MAAMUZI

1. Mahakama iliona kuwa kama ilivyoelezwa na wadaawa wote, nakala ya hukumu ilikuwa tayari kuchukuliwa tarehe 17/4/2020 na nakala ya mwenendo tarehe 5/6/2020. Maombi haya kulingana na rekodi yaliandaliwa 13/11/2020 na kuletwa mahakamani tarehe 19/11/2020. Ukihesabu kutoka 5/6/2020 hadi 19/11/2020 zaidi ya miezi sita inakuwa imepita, kama wakili wa serikali alivyoeleza. Ni matakwa ya sheria kwamba ili maombi ya kuongezewa muda yakubaliwe, ni lazima sababu zitolewa kwa siku zilizocheleweshwa.

2. Kwenye mawasilisho, waleta maombi walidai walileta maombi mapema lakini yalirudishwa kwasababu yalikuwa na mapungufu. Pia walidai kwamba taratibu zote zilifanywa na idara ya magereza bila usimamizi wao. Nimaoni ya mahakama kwamba suala hili likiwa ni la kimantiki lilipaswa lielezwe kwenye kiapo kilichounga mkono maombi yao. Ni mtazamo wa sheria kwamba wadaawa wanafungwa na maelezo yao ya kwenye maombi, wadaawa hawawezi kuleta maswala ambayo hayakuwepo kwenye maombi yao wakati wa kusikiliza. Kufanya hivyo yanakuwa ni mawazo yaliyokuja baadae/kwakuchelewa.
3. Mahakama ilikubaliana na wakili wa serikali James kwamba waleta maombi hawajatoa sababu za msingi ili kuweza kuongezewa muda. wameshindwa kutoa sababu za kuchelewa kwao kwa tarehe walizochelewa kama sheria inavyotaka