

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

**(IN THE DISTRICT REGISTRY OF BUKOBA)**

**AT BUKOBA**

**MISC. CRIMINAL APPLICATION NO. 72 OF 2020**

*(Arising from the Biharamulo District Court at Biharamulo in Economic Case No. No. 30 of 2017)*

**1. AYUBU ILENGESA**

**2. ABDUL YUNUSU**

----- **APPLICANTS**

**Versus**

**THE REPUBLIC**

----- **RESPONDENT**

**RULING**

15/06/2021 & 15/06/2021

**Mtulya, J.:**

Mr. Ayubu Ilengesa and Mr. Abdul Yunusu (the Applicants) had filed their appeal in this court within time in **Economic Appeal Case No. 52 of 2020** (the appeal) to dispute the decision of **Biharamulo District Court at Biharamulo** (the district court) in **Economic Case No. 30 of 2017** (the case). However, in their petition of appeal the Applicants cited the **Criminal Case No. 30 of 2017** from the same District court, instead of the case.

This fault was spotted by learned State Attorney, Mr. Juma Mahona during the hearing of the appeal and prayed the court to strike out the appeal as the court had no the case before it for determination. Following the prayer of Mr. Mahona, the appeal was

struck out, and today the Applicants are before this court asking enlargement of time to file an appeal out of time. In persuading this court to decide in their favour, the Applicants decided to invite legal services of Mr. Dastan Mujaki to argue the application in their favor. In his brief submission, Mr. Mujaki stated that the Applicants were not negligent in filing their appeal with defects but were assisted by prison officers who could not draw proper documents. This reasoning was not protested by learned State Attorney, Mr. Grey Uhagile, who supported the application arguing that interest of justice may let the applicants to have access to this court to have their substantive right determined.

I join hands with the learned minds of Mr. Uhagile for the Republic and Mr. Mujaki for the Applicants. This is a court of justice and should be seen to do that the parties. The Applicants have shown vigilance in following up their appeal to have their substantive right determined and had filed the appeal in this court within time hence cannot be blamed or labelled as negligent applicants (see: **The Registered Trustee of the Evangelical Assemblies of God (T) (EAGT) v. Reverend Dr. John Mahene**, Civil Application No. 518/4 of 2017 and **NBC Limited & Another v. Bruno Vitus Swalo**, Civil Application No. 139 of 2019).

To my opinion Mr. Mujaki successfully persuaded this court to exercise its discretionary powers to decide the application in the Applicants favour (see: **Alliance Insurance Corporation Ltd v. Arusha Art Ltd**, Civil Application No. 33 of 2015; **Eliah Bariki v. Republic**, Criminal Appeal No. 321 of 2016; and **Royal Insurance Tanzania Limited v. Kiwengwa Strand Hotel Limited**, Civil Application No. 116 of 2008). In any case the application received support from Mr. Uhagile for the Republic, who is an officer of the court and may be trusted.

Having said so, and considering there is support of the application in favour of substantive justice, I have decided to grant the Applicants ten (10) days leave from today to file notice of appeal in this court and prefer an appeal in accordance to the laws regulating appeals from lower courts to this court without any further delay.

It is so ordered.

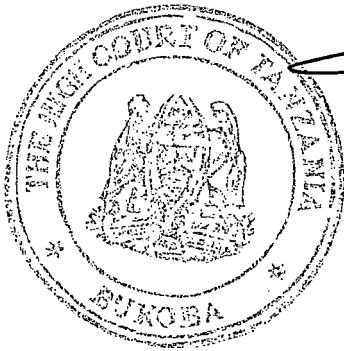


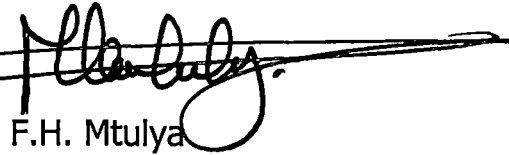
F.H. Mtulya

**Judge**

15.06.2021

This Ruling was delivered in chambers under the seal of this court in the presence of the Applicants, Mr. Ayubu Ilengesa and Abdul Yunusu and in the presence of learned minds Mr. Grey Uhagile for the Republic and Mr. Dastan Mujaki for the Applicants.



  
F.H. Mtulya

**Judge**

15.06.2021