

IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)
AT DAR ES SALAAM

MISC. CRIMINAL APPLICATION NO. 150 OF 2020

(Arising from the decision of the High Court of Dar es salaam, Criminal Appeal No. 125 of 2008, before Hon. Mushi, J dated 16th day of December, 2009, Original Criminal Case No. 478 of 2006, District Court of Morogoro)

OMARY IDD MBEZI.....1ST APPLICANT
VICTOR CHARLES @MPIGA PICHA.....2ND APPLICANT
ABDALLAH ISIAKA@MANILA.....3RD APPLICANT

VERSUS

THE REPUBLIC RESPONDENT

RULING

Date of Order: 05/07/2021.

Ruling date: 16/07/2021.

E. E. Kakolaki, J

By way of chamber summons supported by affidavits of the applicants, the court has been moved to extend time within which the applicants can file a Notice of Appeal and Appeal to the Court of Appeal out time against the decision of this Court in Criminal Appeal No. 125 of 2008, dated 16th day of December, 2009. The application has been preferred under section 11(1) of the Appellate Jurisdiction Act, [Cap. 141 R.E 2019].

Briefly before the District Court of Morogoro at Morogoro in Criminal Case No. 478 of 2006 applicants were jointly and together charged with the offence of **Armed Robbery**; Contrary to Section 287A of the Penal Code, [Cap. 16 R.E 2002] found guilty of the offence, convicted and sentenced to imprisonment for 30 good years. Aggrieved with the decision they unsuccessfully appealed to this Court vide Criminal Appeal No. 125 of 2008 as they had their appeal dismissed for want of merits in its judgment handed down on 16/12/2009. Disgruntled they appealed to the Court of Appeal through Criminal Appeal No. 348 of 2015 where their Notice of Appeal was found to be defective, thus the appeal struck out by the court in its order dated 29/07/2016. The applicants were never heard again in court until 17/08/2020 when this application was preferred. Upon being served with the chamber summons, the respondent filed her counter affidavit challenging the application hence the matter was set for hearing on the 05/07/2021.

On the hearing date both parties were present and the hearing proceeded viva voce. The respondent was represented by Ms. Janipher Masue, Senior State Attorney while the applicants all appeared in person. When called to address the court all applicants adopted their affidavits without more and urged the court to consider the reasons stated therein and grant them the sought extension of time. The application was resisted by Ms. Masue who submitted that, the applicant had failed to advance good cause to warrant this court grant them extension of time as sought. She argued the applicants whose appeal before the Court of Appeal was struck out on the 29/07/ 2016 have not accounted for such inordinate delay of more than four years before this application was preferred on 17/08/2020. She reasoned, it was expected of them to intimate to the court as to what happened to them that took that

long to come up with the present application for this court to consider their application. As they failed to do so she urged the court to dismiss their application for want of merits. In their reply submission almost all applicants claimed that they filed several applications soon after the dismissal of their appeal before the Court of Appeal but the same went missing. As it was not in their control to make a follow up they prayed the court to find good reasons were stated hence proceed to grant the prayer as appearing in the chamber summons.

I have considered the submissions by both parties. It is not in dispute that this court has unfettered discretion to grant the prayers sought by the applicant. However the said discretion has to be exercised judiciously and upon the applicant supplying to the court good cause or sufficient reasons. What amounts to good cause there is no hard and fast rules as the court has to look into the reasons advanced and the circumstances surrounding a particular matter. This position of the law is stated in plethora of authorities one of which is **Oswald Masatu Mwizarubi Vs. Tanzania Fish Processing Ltd**, Civil Application No. 13 of 2010, (CAT-unreported) where the Court of Appeal stated thus:

"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 the party seeking extension of time to provide the relevant material in order to move the court to exercise its discretion."

For the court to grant extension therefore the applicant has to convince the court that, there are sufficient reasons for granting him/her the prayers

sought which might include propriety of the decision intended to be appealed against, the surrounding circumstances of the case the weight and issues attached to as it was held in the case of **Republic Vs. Yona Kaponda and 9 Others** (1985) T.L.R 84, where the Court stated at page 86 that:

"In deciding whether or not to extend time I have to consider whether or not there are "sufficient reasons." As I understand it, "sufficient reasons" here does not refer only, and is not confined, to the delay. Rather it is "sufficient reason" for extending time, and for this I have to take into account also the decision intended to be appealed against, the surrounding circumstances, and the weight and implications of the issue or issues involved."

It should be noted whoever that, the applicant is duty bound also to account for the delay caused in filing the appeal or application at hand as it was held in the case of **Alman Investment Ltd Vs Printpack Tanzania and Others**; Civil Application No. 3 of 2003 (Unreported) where the court said that:

"Applicant ought to explain the delay of every day that passed beyond the prescribed period of limitation."

In this case the applicants neither annexed to their affidavits the decision sought to be assailed for this court to take into account the issues involve and their weights, surrounding circumstances and implication of the decision sought to be impugned nor did they account for the delay of more than four (4) years before filing this application as submitted by Ms. Masue for the respondent. The assertion that their earlier applications in this court went missing does not find any support in their affidavit apart from remaining

mere words which this court cannot rely on to base its decision. It is from those reasons I am of the firm view that the applicants have failed to advance good cause to warrant this court grant them the prayers sought in the chamber summons.

In the premises I remain with no other option than to dismiss the application for want of merits which I hereby do.

It is so ordered.

DATED at DAR ES SALAAM this 16th day of July, 2021.




E. E. KAKOLAKI

JUDGE

16/07/2021

Ruling delivered today 16th day of July, 2021 in the presence of all applicants in person, Ms. Monica Msuya, Court clerk and State Attorney for the Respondent.




E. E. KAKOLAKI

JUDGE

16/07/2021