

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

**IN THE DISTRICT REGISTRY OF ARUSHA**

**AT ARUSHA**

**MISC. CRIMINAL APPLICATION NO. 62 OF 2021**

**(Original, Criminal Case No. 272 of 2019 in the District Court of Kiketo at Kibaya)**

**SHEDRACK SIMON.....1<sup>ST</sup> APPLICANT**

**JULIUS SIMON.....2<sup>ND</sup> APPLICANT**

**VERSUS**

**THE REPUBLIC.....RESPONDENT**

**RULING**

**25/08/2021**

**GWAE, J**

This application has been brought under the provisions of section 361 (2) of the Criminal Procedure Act Cap 20 R.E 2019 where the applicants are seeking for extension of time to file their appeal out of time. The application is supported by a joint affidavit of the applicants.

At the hearing of the application the applicants appeared in person unrepresented, while the respondent was represented by **Ms. Mary Lucas**, learned State Attorney who did not object the application.

Reasons for delay are given in the applicants' affidavit where it is stated that the delay is as a result of the applicants' advocates' failure to file their petition

of appeal and since they are in prison custody, they were unable to timely notice that their advocate had not filed their petition of appeal, thus, the time to file their appeal had lapsed.

I am well aware of the position the law that negligence or an error made by an advocate through negligence or lack of diligence is not sufficient cause for extension of time. See the case of **Yusuph Same & Another vs. Hadija Yusuph**, Civil Appeal No. 01 of 2002 (Unreported). However, the Court of Appeal of Tanzania in the Case of **Charles Chama & others vs. The Regional Manager TRA & Others**, Civil Appeal No. 224 of 2018 (Unreported) observed that; "every case must be decided on its own set of facts".

In the present case I have considered the fact that the applicants are in prison custody. Therefore, they were unable to make frequent follow ups to see if their petition was filed or not, and the fact that they entrusted their advocate to file their petition of appeal on their behalf but unfortunately turned them down, this court finds the applicants blameless in the alleged delay. I have also considered the fact that the respondent herein has not objected the application, in the circumstances, I find no justification not to allow this application and grant the prayer sought by the applicants.

Accordingly, this application is allowed. Leave is granted for the applicants to file their appeal within 14 days from the date of this order.

It is so ordered.



**M. R. GWAE**

**JUDGE**

**25/08/2021**

