

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

**(THE DISTRICT REGISTRY OF TANGA)**

**AT TANGA**

**Misc. CRIMINAL APPLICATION No. 22 OF 2021**

*(Arising from the Resident Magistrates' Court of Tanga at Tanga in Criminal Case No. 19 of 2020)*

**DICKSON PROSPER @ MUTABUZI ----- APPLICANT**

**Versus**

**REPUBLIC ----- RESPONDENT**

**RULING**

**22.11. 2021 & 22.11.2021**

**F. H. Mtulya, J.:**

**Mr. Dickson Prosper @ Mtabuzi** (the applicant) has applied for an extension of time in this court to prefer an appeal out of time (the application) against decision of the **Resident Magistrates' Court of Tanga at Tanga** (the court) in **Criminal Case No. 19 of 2020** (the case).

Being aware of the requirement of the law as enacted in section 361 (2) of the **Criminal Procedure Act** [Cap. 20 R.E. 2019] (the Act), which require *good cause* and precedents in **Eliah Bariki v. Republic**, Criminal Appeal No. 321 of 2016 and **Republic v. Yona Kaponda & Nine Others** [1985] TRL 84 which require production of *relevant materials* to persuade this court to grant applications like the present

one, the applicant claims that he was transferred by prison authorities from **Maweni Central Prison** based in Tanga Region to **Mng'aro Farm Prison** located at mountain area of Lushoto District.

Reading the third, fourth, fifth and sixth paragraphs of the applicant's affidavit, the following materials are, in brief, displayed: *I informed the prison admission officer to fill the notice of appeal for legal steps... [However] according to labour division and other needs, I was transferred from Maweni Central Prison at Tanga to Mng'aro Farm Prison at Lushoto...I am fully depends upon prison authorities...* According to the applicant the transfer disturbed his follow-up of the notice of intention to appeal and lodging of an appeal in this court hence filed the present application.

Today morning when the application was scheduled for mention, Mr. Joseph Makene, learned State Attorney, who appeared for the Republic, submitted that the Republic does not intend to protest the application and asked for necessary orders from this court as per circumstances of the application. This submission was received well by the applicant who briefly stated that he has nothing to add and left it to this court to decide on whether relevant materials were produced as per affidavit.

This is a court of law and guided by the law in deciding matters brought before it. The present application poses an issue: *whether the applicant has produced relevant materials to persuade this court to decide in his favour as per law in section 361 (2) of the Act and precedents in **Eliah Bariki v. Republic** (supra) and **Republic v. Yona Kaponda & Nine Others** (supra)*. The cited precedents analyzed the importance of production of *good cause* in an application like the present one and have already received support in civil practice as displayed in the precedents of our superior court in **Oswald Masatu Mwizarubi v. Tanzania Processing Ltd**, Civil Application No. 13 of 2010 and **Dar Es Salaam City Council v. Jayantilal P. Rajani**, Civil Application No. 27 of 1987.

Scanning the present application, the applicant has produced a reason of transfer from one prison authority to another. The reason has already received directives of our superior court in favour of the applicants in the precedent of the Court of Appeal in **Yusufu Hassan v. Republic**, Criminal Application No. 50/12 of 2017. The directives have been received well by this court and currently there is a large family of precedents on the reason (see: **Byera Julius @ Buton v. The Republic**, Misc. Criminal Application No. 13 of 2021; **Bakari Choma v. Republic**, Misc. Criminal Application No. 12 of 2021; **Mosses William v. Republic**,

Misc. Criminal Application No. 61 of 2020, **Linus Pius & Four Others v. Republic**, Misc. Criminal Application No. 81 of 2020, and **Tuombe John @ Sungura v. Republic**, Misc. Criminal Application No. 18 of 2021; **Nassoro Juma @ Nguruwe v. Republic**, Misc. Criminal Application No. 1 of 2021).

In **Nassoro Juma @ Nguruwe v. Republic** (supra), the applicant had produced the reason transfer from **Maweni Central Prison** in Tanga Region to **Karanga Prison** located at Moshi District in Kilimanjaro Region, and was granted leave to prefer notice of intention to appeal and appeal out of time. Similarly, in the precedent of **Bakari Choma v. Republic**, (supra), this court granted leave to the applicant to prefer notice of intention to appeal and appeal out of time after justification of transfer by prison authorities from **Maweni Central Prison** in Tanga City to **Mng'aro Farm Prison** in Lushoto District. I think, in my opinion, this application will follow the same course to maintain certainty in decisions emanating from this court.

Again, the applicants alleges that he was under prison authority which incapacitated his wishes to file notice of intention to appeal and appeal within time. I think the applicant shows that he faced difficulties caused by the third party prison authority or there were factors beyond his control. Such situations were also considered and

granted leave of extension of time to file appeals out of time by this court and Court of Appeal (see: **Foreign Mission Board of Southern Baptist Convention v. Alexander Panomaritis** [1984] T.L.R 146; **Benezeth Mwebesi & Two Others v. Baraka Peter**, Misc. Civil Application No. 46 of 2019; **Linus Pius & Four Others v. Republic** (supra); and **Nassoro Juma @ Nguruwe v. Republic** (supra).

Having said so, and considering the applicant has produced good reasons well known from the practice of this court and our superior court, I have nothing to add rather than to grant the application. I have therefore decided to grant the applicant ten (10) days' leave to file notice of intention to appeal in this court and to lodge an appeal within forty five (45) days from today, without any further delay.

Ordered accordingly.



F. H. Mtulya

**Judge**

22.11.2021

This Ruling is delivered in Chambers under the seal of this court in the presence of the applicant, Mr. Dickson Prosper @ Mtabuzi through Video Conference in Maweni Central Prison at Tanga and in the presence of the learned State Attorney, Mr. Joseph Makene for the Respondent.



A handwritten signature in blue ink, which appears to read "F. H. Mtulya", is written over the seal and extends to the right.

F. H. Mtulya

**Judge**

22.11.2021