

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF MUSOMA

AT MUSOMA

Misc. CRIMINAL APPLICATION No. 24 OF 2022

(Arising from the District Court of Musoma at Musoma in Criminal

Case No. 18 of 2016)

NYAITATI MATINDE @ MASIAGA CHACHA APPLICANT

Versus

REPUBLIC RESPONDENT

RULING

24.06.2022 & 08.07.2022

Mtulya, J.:

This court in the precedent of **Benard Makondo Gambachara v. Republic**, Misc. Criminal Application No. 25 of 2022, on 14th June 2022 had granted a prisoner in custody, Mr. Benard Makondo Gambachara, thirty (30) days leave to file a notice of intention to appeal and forty five (45) days leave to lodge petition of appeal out of time in this court from the date of pronouncement of the decision without any further delay, to contest the judgment of the **District Court of Serengeti at Mugumu** (the Serengeti district court) in **Economic Case No. 112 of 2019** (the economic case).

The reasoning of this court was based on two (2) precedents of our superior court, the Court of Appeal (the Court) in **Otieno Obute v. The Republic**, Criminal Application No.1 of 2011 and

Yusufu Hassan v. Republic, Criminal Application No. 50/12 of 2017. The Court in the cited rulings granted applications for enlargement of time to prisoners in custody. The reasoning in the precedent of **Otieno Obute v. The Republic** (supra) was that:

I have considered the averments by both parties and come to the conclusion that this application has merit. As a prisoner, his rights and responsibilities are restricted. Therefore, he did what he could do. He may have been let down by reasons beyond his means... Accordingly, the application is granted.

The reasoning and thinking of the Court was invited again on 18th February 2020 in the Ruling of **Yusufu Hassan v. Republic** (supra). The basis of granting leave to Yusufu Hassan in the decision is reflected at page 7 of the Ruling:

*I am mindful of the position taken by the Court in various decisions where the Court considered the situation of prisoners that they are not free agents who can freely make follow-ups on their matters; and thus granted applications for extension of time. See for instance decisions in **Otieno Obute v. The Republic**, Criminal Application No.1 of 2011; **Joseph Sweet v. The Republic**,*

*Criminal Appeal No. 11 of 2017 and **Fabian Chumila v.***

***The Republic**, Criminal Application No. 6/10 of 2019.*

The thinking of the Court was well received by this court and borrowed in a bunch of decisions without reservation clauses (see: **Benard Makondo Gambachara v. Republic** (supra); **Makaranga Swea Limbe v. Republic**, Misc. Criminal Application No. 23 of 2023; **Gasaya Bwana @ Chacha v. Republic**, Misc. Criminal Application No. 22 of 2022; and **Juma Moroka Masyora v. Republic**, Misc. Criminal Application No. 23 of 2022).

The standard practice of this court and the Court has been that applicants for enlargement of time must produce good cause to persuade this court or the Court to decide applications in their favour (see: **Zuberi Nassor Moh'd v. Mkurugenzi Mkuu wa Shirika la Bandari Zanzibar**, Civil Application No. 93/15 of 2018 and **Mnanka Sari Matiko @ Bisare v. Republic**, Consolidated Misc. Criminal Application No. 44 & 45 of 2022).

In the precedent of **Zuberi Nassor Moh'd v. Mkurugenzi Mkuu wa Shirika la Bandari Zanzibar** (supra), at page 9, the Court recorded that: *as what constitutes sufficient cause, it has been explained in most cases it depends on the circumstance of each case.* Similar statement was drafted by the Court in a bundle of precedents (see: **NBC Limited & Another v. Bruno Vitus Swalo**,

Civil Application No. 139 of 2019; **Richard Mbwana v. Joseph Mang'anya**, Misc. Land Case Application No. 2 of 2021; **Republic v. Ramadhani Mohamed Chambali**, Criminal Sessions Case No. 11 of 2020; and **Dar Es Salaam City Council v. Jayantilal P. Rajani**, Civil Application No. 27 of 1987).

In the present application, **Mr. Nyaitati Matinde @ Masiaga Chacha** (the applicant) approached the prisons authorities in Musoma on 5th May 2022 asking them to forward and file his application for enlargement of time in this court to dispute the judgment of the **District Court of Musoma at Musoma** (the district court) in **Criminal Case No. 18 of 2016** (the case). After production of materials in favour of the application, both in affidavit and during the hearing of the application, three (3) reasons of delay were at the display, namely: first, the applicant was in prison custody under prisons authorities; second, the applicant was transferred in several prisons authorities from Musoma Prison in Mara Region through Butimba Prison in Mwanza to Moro Prison in Rukwa Region; third, ignorance of law in filing two (2) notices of intention to appeal within time from two (2) cases decided by the district court.

The Republic, being aware of the above cited precedents of this court and the Court, did not protest the materials related to the

third party, prisons authorities and rights enjoyed by persons in prisons custody. However, the Republic was concerned with two reasons of delay in filing the notices of intention to appeal within time and accountability of each day of the delay. The Republic had marshalled Ms. Agma Haule, learned State Attorney, to protest the application and produce the precedent of the Court in **Wambele Mtumwa v. Mohamed Hamis**, Civil Reference No. 8 of 2018 to persuade this court to determine the application against the applicant.

During the hearing of the application in this court, Ms. Haule cited page 10 & 14 of the precedent contending that ignorance of the law has never been accepted as a sufficient reason for enlargement of time and that the applicant has failed to account on every day of the delay as directed by the Court. In order to substantiate her claims, Ms. Haule submitted that the applicant has remained silent in his affidavit and during application hearing in this court on the said ignorance of law and what he was doing from receipt of the Ruling of this court in **Criminal Appeal No. 161 of 2019** decided on 3rd July 2020 and supplied to him on 6th July 2022 to 5th May 2022, when the applicant approached prisons authorities to file the present application.

Replying the arguments submitted by Ms. Haule, the applicant submitted that he had filed an application in this court between 6th July 2020 and 5th May 2022, but had received no any reply or summons from this court and there is no any record or trace of the application number. However, he prayed this court to grant him leave to register a copy of the intended application, which is in his custody at Musoma Prison. The prayer was not protested by Ms. Haule and was accordingly granted on 17th June 2022 and on 24th June 2022, the documents were produced in this court.

However, the documents were protested for admission and to to form part of the proceedings by Ms. Haule for two reasons, *viz*: first, the applicant failed to state the same in his affidavit; and second, they were not authentic documents for bearing forged signature and handwriting of learned counsel Mr. Daud Mahemba. It is from the claims of Ms. Haule, and prayer of the applicant to call Mr. Mahemba, and noting interest of justice to the parties, this court summoned Mr. Mahemba to testify on the contested signature and handwriting. Mr. Mahemba appeared in this court on 24th June 2022 for the exercise, and according to him, the instruments which were brought in the application were not either prepared or signed by him, let alone the handwriting. Following this fact, the instruments were not admitted to form part of the proceedings.

From the record, it is obvious that the applicant's accountability of days from 6th July 2020 to 5th May 2022 is not stated in the affidavit and displayed during the proceedings in this court. The standard practice of the Court is that: *a delay even of a single day has to be accounted for* (see: page 9 in the precedent of **Wambele Mtumwa v. Mohamed Hamis** (supra); **Sebastian Ndaula v. Grace Rwamafa**, Civil Application No. 4 of 2014; **Bariki Israel v. Republic**, Criminal Application N. 4 of 2011; and **Bushfire Hassan v. Latina Lucia Masanya**, Civil Application No. 3 of 2007).

The reason of setting the standard is found in the precedent of the Court in **Bushiri Hassan v. Latifa Mashayo**, Civil Application No. 3 of 2007 that: *there would be no point of having rules prescribing periods within which certain steps have to be taken*. The Court has set the practice to decline applicants who prefer their applications for enlargement of time as and when they so wish (see: (**Bank of Tanzania v. Saidi Malinda & 30 Others**, Civil Ref. 3 of 2014).

I am aware and certain that each application has to be decided upon its peculiar circumstances (see: **NBC Limited & Another v. Bruno Vitus Swalo**, Civil Application No. 139 of 2009; **Richard Mbwana v. Joseph Mang'anya**, Misc. Land Case Application No. 2 of 2021; and **Republic v. Ramadhani Mohamed**

Chambali, Criminal Sessions Case No. 11 of 2020), and that it discretion of this court to decide on leave for enlargement of time (see: **Samwel Sichone v. Bulebe Hamis**, Civil Application No. 8 of 2015; **Oswald Masatu Mwizarubi v. Tanzania Processing Ltd**, Civil Application No. 13 of 2010; **Alliance Insurance Corporation Ltd v. Arusha Art Ltd**, Civil Application No. 33 of 2015; **Royal Insurance Tanzania Limited v. Kiwengwa Strand Hotel Limited**, Civil Application No. 116 of 2008; and **Sebastian Ndaula v. Grace Rwamafa**, Civil Application No. 4 of 2014).

However, this court must exercise the powers depending on materials registered in the application. In the present application, the application registered materials at two levels, namely: first, those related with prisons authorities and ignorance of the law. In protesting the application, Ms. Haule had produced the requirement of accountability of every day of the delay. It is fortunate that all the three (3) materials are supported by the precedents of the Court and this court. In the circumstances of the present case, apart from other materials, the delay for more than six hundred (600) days from 6th July 2020 to 5th May 2022, without reasonable explanation, cannot persuade this court to grant the application.

It is unfortunate on the part of the applicant that during the time of delay, the record shows that he was appearing in different

courts and had preferred other applications and appeals in courts. It is also unthinkable for a vigilant person to stay in prison custody for more than six hundred (600) days without inquiring the status of the claimed application after decision in **Criminal Appeal No. 161 of 2019** in July 2020, in form of letters or through complaints during usual visitations of judicial officers and justice stakeholders in prisons authorities.

Having said so and considering applicants for enlargement of time are discouraged by the Court in registering applications for enlargement of time as and when they so wish, as in the precedent of **Bank of Tanzania v. Saidi Malinda & 30 Others** (supra) and being aware are required to account on every day of the delay, and recognizing the applicant has not accounted on every day of the delay, as per directives of the Court in **Wambele Mtumwa v. Mohamed Hamis** (supra), I have decided to decline the application and accordingly dismissed without costs for want of accountability of each day of the delay.

It is so ordered.



F. H. Mtulya

Judge

08.07.2022

This Ruling was delivered in chambers under the seal of this court in the presence of the applicant, Mr. Nyaitati Matinde @ Masiaga Chacha and in the presence of Ms. Agma Agrey Haule, learned State Attorney, for the Republic.



F. H. Mtulya

Judge

08.07.2022