

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

**IN THE DISTRICT REGISTRY OF MUSOMA**

**AT MUSOMA**

**Misc. CRIMINAL APPLICATION No. 25 OF 2022**

*(Arising from the District Court of Serengeti at Mugumu in*

*Economic Case No. 112 of 2019)*

**BENARD MAKONDO GAMBACHARA ..... APPLICANT**

***Versus***

**REPUBLIC ..... RESPONDENT**

**RULING**

14.06.2022 & 14.06.2022

Mtulya, J.:

In the precedent of **Otieno Obute v. The Republic**, Criminal Application No.1 of 2011, the Court of Appeal (the Court) granted an application for enlargement of time to a prisoner and the Court reasoned 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.*

This thinking of the Court was borrowed in the precedent of **Yusufu Hassan v. Republic**, Criminal Application No. 50/12 of 2017

on 18<sup>th</sup> February 2020. With approval of a bunch of precedents from the same Court, the precedent had considered and granted enlargement of time within which an applicant prisoner lodged an application for review out of time. The basis of leave in favour of filing of the review out of time is found 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 standard practice of this court and the Court is 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).

The circumstances which prisoners in custody are facing were well recorded and exhibited in multiple decisions of the Court as indicated above. This court has currently invited and celebrated the pigeon hole as part of the reasons for consideration in enlarging time period in several cases. It has done so without displaying any reservation clauses (see: **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).

This court will have no any hesitation in granting the present application without plenty of hustles as the applicant is currently in

prison custody serving twenty (20) years imprisonment after being found guilty of the offence of possessing government trophies without valid licence in the **District Court of Serengeti at Mugumu** in **Economic Case No. 112 of 2019**. In any case, the Republic is fully aware of the circumstances under which the applicant is facing, including his initial appeal being struck out for want of time limitation. That is why learned State Attorney, Mr. Tawabu Yahya, appearing for the Republic, did not register any protest in the application. I think Mr. Tawabu is also well aware of the right to access this court via enactment in article 13 (6) (a) of the **Constitution of the United Republic of Tanzania** [Cap. 2 R.E. 2002].

In the end, I have decided to enlarge time for the applicant to file notice of intention to appeal within thirty (30) days and petition of appeal within forty five (45) days from the date of pronouncement of this Ruling without any further delay.

It is so ordered.



F. H. Mtulya

**Judge**

14.06.2022

This Ruling was delivered in chambers under the seal of this court in the presence of the applicant, Mr. Bernard Makondo Gambachara and in the presence of Mr. Tawabu Yahya, learned State Attorney, for the Republic through teleconference.



F. H. Mtulya

**Judge**

14.06.2022