

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

BUKOBIA DISTRICT REGISTRY

AT BUKOBIA

MISC. ECONOMIC APPLICATION NO. 09 OF 2022

(Arising from Economic Case No. 03 of 2019 of Muleba District Court)

EVELIUS BURCHARDAPPLICANT

VERSUS

REPUBLIC RESPONDENT

RULING

06/09/2022 & 07/09/2022
E. L. NGIGWANA, J.

This is an application for extension of time within which to lodge Notice of Appeal and an Appeal out of time against the decision of Muleba District Court in Economic Case No. 03 of 2019 delivered on 10/03/2021.

The application is by way of Chamber summons made under the provisions of Section 361 (2) and 392 (A) of the Criminal Procedure Act, Cap 20 R: E 2022, and supported by an affidavit duly sworn by the applicant. The application is not opposed by the respondent/Republic.

A brief background of this matter is to the effect that, the applicant Evelius Burchard and one Mefubosheti Isaya were jointly and together charged with the Offence of Unlawful Possession of Government Trophies contrary to section 86 (1) and (2) (c) (ii) of the Wildlife Conservation Act of 2009 as amended by section 59 of the Written Laws (Miscellaneous Amendments) No.2 Act No.4 of 2016 read together with paragraph 14 of the First Schedule and section 57 (1) of the Economic and Organized Crimes Control Act Cap 200 R:E2002 as amended by section 16 of the Written Laws (Miscellaneous Amendments) Act No.3 of 2016.

It was alleged that, on 15/12/2019 at Waisuka Guest House in Kagabiro Street within Muleba District in Kagera Region, the Applicant and one Mefubosheti Isaya were found in possession of Government Trophy to wit; one skin and meat of serval cat (Mondo) valued at USD 500 without a valid written permit from the Director of the Wildlife Conservation Authority.

The Applicant and one Mefubosheti Isaya denied the charge; as a result, the case proceeded to a full trial at which the court was satisfied that the case against the applicant had been proved beyond reasonable doubt, therefore, he was convicted and sentenced to twenty (20) years imprisonment. The said Mefubosheti Isaya was acquitted as the court found that, the case against him had not been proved beyond reasonable doubt.

The applicant was aggrieved by the decision of the trial court, though he neither filed the Notice of intention to appeal and an appeal to this court due to reasons alleged case beyond this control hence, this application.

The application was argued orally whereas, the Applicant appeared in person, unrepresented while Mr. Amani Kilua, learned State Attorney appeared for the Respondent/Republic.

Submitting in support of the application, the Applicant adopted his affidavit and prayers on the chamber application to form part of his submission. The applicant stated that he failed to file both the Notice of intention to appeal and an appeal to this court owing to reasons that were beyond his control. He further submitted that he processed the Notice of intention to appeal in time through Muleba Prison admission Officers, who had the duty to

forward the same to the High Court Registry, but the Officers delayed to file the same, and that omission was out of his control.

He also stated that, he was later transferred from Muleba Prison to Bukoa Prison in which he was supplied with a copy of judgment on 13/03/2022 whereas on 13/05/2022, he filed this application.

Having heard the applicant and the respondent, the issue for determination is whether the applicant has been able to advance sufficient reason(s) for the delay.

Section 361 (1) of the Criminal Procedure Act of 20 R: E 2022 provides that;

"Subject to subsection (2), no appeal from any finding, sentence or order referred to in section 359 shall be entertained unless the appellant-

(a) has given notice of his intention to appeal within ten days from the date of the finding, sentence or order"

Section 361 (2) of the Criminal Procedure Act, Cap 20 R: E 2022 provides that;

"The High Court may for good cause, admit an appeal notwithstanding that the period of limitation prescribed in this section has elapsed."

It is a cardinal principle that an application for extension of time is entirely in the discretion of court to grant or refuse and that extension of time may only be granted where it has been sufficiently established that the delay was due to sufficient cause.

Conversely, it is also well settled that the sufficient cause depends on deliberation of various factors, some of which revolve around the nature of actions taken by the applicant immediately before or after becoming aware that the delay is imminent or might occur. See decisions in the case of **Regional Manager Tan roads Kagera versus Rinaha Concrete Co. Ltd; Civil Application No. 96 of 2007 CAT, unreported and Godwin Ndeweri and Karoli Ishengoma versus Tanzania Indil Corporation (1995) TLR 200 and Republic versus Yona Kaponda and 9 others (1985) TLR 84.**

As stated earlier, the Republic has no objection to the application by the applicant owing to the reason that the applicant has advanced sufficient reasons to warrant the grant of the prayer. I also shake hands with the learned State Attorney that the applicant has managed to demonstrate sufficient cause for the delay.

In the event, I allow the application. The applicant is given a period of ten (10) days from the date of this ruling within which to file the Notice of intention to appeal, as well as Twenty one (21) days within which to file the petition of appeal to this court to challenge the decision of Muleba District Court in Economic Case No. 03 of 2019 delivered on 10/03/2021.

It is so ordered.

Dated at Bukoba this 7th day of September, 2022.

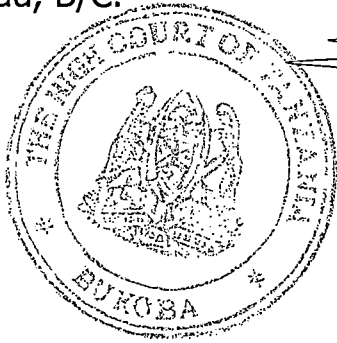


E.L. NGIGWANA

JUDGE

07/09/2022.

Ruling delivered this 7th day of September 2022, in the presence of the applicant in person, Mr. Amani Kilua, learned State Attorney for the Republic, Hon. E. M. Kamaleki, Judges' Law Assistant, and Tumaini Hamidu, B/C.



E.L. NGIGWANA

JUDGE

07/09/2022