

THE UNITED REPUBLIC OF TANZANIA

(JUDICIARY)

IN THE HIGH COURT- DISTRICT REGISTRY OF MUSOMA

AT MUSOMA

Misc. CRIMINAL APPLICATION No. 44 OF 2022

(Arising from the District Court of Serengeti at Mugumu in

Criminal Case No. 30 of 2020)

ROBERT WAMBURA @ MUNGINE APPLICANT

Versus

REPUBLIC RESPONDENT

RULING

21.11.2022 & 22.11.2022

Mtulya, J.:

Mr. Robert Wambura @ Mungine (the applicant), **Mr. David Mohamed @ Nyangi** and **Mr. Juma Chacha Roha** were jointly charged with the offence of armed robbery contrary to section 287A of the **Penal Code [Cap. 16 R.E 2019]** (the Code) at the **District Court of Serengeti at Mugumu** (the district court) in **Criminal Case No. 30 of 2020** (the case). After a full hearing of the case, the district court found all the three accused persons guilty of the cited offence and accordingly convicted and sentenced them as per requirement of the law. The sentence was pronounced by the district court on 22nd October 2020. The applicant was aggrieved by the decision and is intended to protest the decision in this court. However, the applicant had found himself out of forty five (45) days statutory time to lodge

an appeal in this court hence on 10th October 2022, he preferred the present application, almost two (2) years after the decision, seeking for enlargement of time to prefer an appeal in this court out of statutory time.

According to the applicant's affidavit and submission in this court, the delay was caused by confusion in his mind after delivery of the decision on 22nd October 2020 and he came to settle his senses on 10th October 2022. The applicant also contended that the prisons authorities had advised him to prefer an appeal to exercise his right to be heard in an appeal stage. Finally, the applicant prayed this court to grant enlargement of time to cherish the right to be heard in an appeal out of time.

On the other hand, the Republic had marshalled **Mr. Tawabu Yahya Issa**, learned State Attorney, to protest the application. According to Mr. Issa, the law and practice require applicants for enlargement of time to produce good cause or relevant materials to persuade this court to grant the application in their favor. In order to substantiate his submission, Mr. Issa cited the law enacted in section 361 (2) of the **Criminal Procedure Act [Cap. 20 R.E. 2022]** (the Act) and the practice of the Court of Appeal (the Court) in **Hamis Mahona v. Republic**, Criminal Appeal No. 141 of 2017 which was approved by the

same Court sitting in Musoma District Registry in **Moroga Mwita Moroga v. Republic**, Criminal Appeal No. 181 of 2020. According to Mr. Issa, the Court in the decision of **Moroga Mwita Moroga v. Republic** (supra), at page 6 added another important requirement on accountability of every day of the delay. In interpreting the present appeal, Mr. Issa submitted that the applicant has neither registered good cause nor accounted on every day of the delay as the registered reasons of the delay are not part of the good causes.

In his opinion, the question of unsettled mind or advice from prisons authorities has never been good cause in enlargement of time to lodge an appeal out of time. Finally, Mr. Issa prayed this court to dismiss the application for lack of support in law and practice of the Court. In his brief rejoinder, the applicant prayed this court to grant the application as it is the discretion of the court to do so and for the sake of mercy of the applicant to prefer an appeal.

I have consulted the cited section 361 (2) of the Act. The provisions was enacted in the following text, in brief: *The High Court may, **for good cause**, admit an appeal notwithstanding that the period of limitation prescribed in this section has elapsed.* This court and the Court of Appeal, when interpreting

the section, have constantly require applicants for enlargement of time to produce relevant materials to persuade this court and the Court of Appeal to decide in their favor (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 stated 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).

I am aware that for applicants in prisons authorities, the Court has been considerate owing to their nature and circumstances (see: **Otieno Obute v. The Republic**, Criminal Application No.1 of 2011; **Joseph Sweet v. The Republic**,

Criminal Appeal No. 11 of 2017; **Fabian Chumila v. The Republic**, Criminal Application No. 6/10 of 2019; and **Yusufu Hassan v. Republic**, Criminal Application No. 50/12 of 2017).

The trend of the Court on prisoners in prison custody has been followed by this court without any reservations (see: **Benard Makondo Gambachara v. Republic**, Misc. Criminal Application No. 25 of 2022; **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).

However, the practice of courts shows that applicants for enlargement of time who intend to file appeals out of statutory time to be prompt in bringing their applications for enlargement of time (see: **Dar Es Salaam City Council v. Jayantilal P. Rajani**, Civil Application No. 27 of 1987). This is necessary in order to substantiate vigilance on their part (see: **The Registered Trustee of the Evangelical Assemblies of God (T) (EAGT) v. Reverend Dr. John Mahene**, Civil Application No. 518/4 of 2017 and **NBC Limited & Another v. Bruno Vitus Swalo** (supra). The practice of the Court and this court discourages applicants for enlargement of time to file 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 of the general principle that every case is decided upon its peculiar facts (see: **NBC Limited & Another v. Bruno Vitus Swalo** (supra). However, if applicants cannot account on each day of the delay and without plausible explanation on the delay for almost two (2) years, he cannot enjoy the discretion of this court in granting enlargement of time to file an appeal out of time (see: **Bushiri Hassan v. Latifa Lukio Mashayo**, Civil Application No. 3 of 2007 and **Nyaitati Matinde @ Masiaga Chacha v. Republic**, Misc. Criminal Application No. 24 of 2022).

In the present case, the applicant had produced two reasons of delay, namely: confusion in his mind after delivery of the decision at the district court; and advice from the prisons authority. The reasons may be considered to be part of the pigeon holes of good cause, but for the delay of almost two (2) years pegs the applicant in sloppiness and cannot be granted enlargement of time to prefer an appeal out of time in this court. This court has already considered and refused similar situation in the precedent of **Nyaitati Matinde @ Masiaga Chacha v. Republic**

(supra), where the applicant had delayed for almost two (2) years in filing an application for enlargement of time.

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, 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 the cited precedents, I have decided to decline the application and accordingly dismissed for want of good cause and accountability of each day of the delay.

It is so ordered.




F. H. Mtulya

Judge

22.11.2022

This Ruling was delivered in chambers under the seal of this court in the presence of the applicant, **Mr. Robert Wambura @ Mungine** and in the presence of **Mr. Tawabu Yahya Issa**, learned State Attorney, for the Republic, through teleconference.


F. H. Mtulya

Judge

22.11.2022