

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

**(SUMBAWANGA DISTRICT REGISTRY)**

**AT SUMBAWANGA**

**MISC. CRIMINAL APPLICATION NO. 59 OF 2020**

(C/O Resident Magistrate's Court of Katavi Economic Crimes Case No. 23 of 2019)

(F. U Shayo, RM)

**JOHN S/O DONALD @ FABIAN ..... 1<sup>st</sup> APPLICANT**

**ELFAS S/O ANTHONY @ SADN ..... 2<sup>nd</sup> APPLICANT**

**ZAKARIA S/O EDWARD @ KAPETA ..... 3<sup>rd</sup> APPLICANT**

**VERSUS**

**THE REPUBLIC ..... RESPONDENT**

**RULING**

Date: 13 & 13/05/2022

**NKWABI, J.:**

The applicants are seeking extension of time within which to file a notice of intention to appeal to this court. The chamber summons is supported by the affidavit of the 1<sup>st</sup> and 3<sup>rd</sup> applicants. There is also the affidavit of the Officer In-charge Mpanda prison to support the affidavits of the applicants. The record shows that the 2<sup>nd</sup> applicant died on 04/11/2020 prior to the lodgement of this application. Nevertheless, Ms. Maguta, learned State Attorney prayed this court the application in respect of the 2<sup>nd</sup> applicant be marked withdrawn. It was withdrawn as such.

On 25/08/2020 the Resident Magistrates Court of Mpanga convicted and sentenced the applicants to twenty years imprisonment for two counts of unlawful possession of government trophies. The sentences were ordered to run concurrently.

It was on 23/11/2020 the applicants lodged this application seeking the extension of time so that they lodge their intended criminal appeal. The application is brought under section 361(2) of the Criminal Procedure Act Cap. 20 R.E. 2019. It is supported by the affidavit duly sworn by the applicant as well as that of the Prison officer in-charge.

In the unopposed applicants' affidavits, the applicants attest that the delay in lodging their notice of intention to appeal was attributed to computer machine breakdown (collapse) at the particular time. There is also an affidavit duly sworn by the officer in-charge of Mpanda prison certifying what that indeed the computer was broken down, but he was informed to that effect.

Meanwhile, in the hearing of this application, the applicants appeared in person while the respondent was ably represented by Mr. Marietha Maguta, learned State Attorney.

In the course of the hearing, the applicants fully adopted their respective affidavits as their submissions and had nothing to explain. They urged me to grant their application. Ms. Maguta for the respondent doubted the reason for the delay saying that at the same time, several criminal appeals were filed in this court, therefore the ground is baseless. She urged me to dismiss the application since the applicants for that reason. The applicants had nothing in rejoinder.

I have duly considered this application, in my view, the applicants have failed to put to the court material to enable it to enlarge the time they are seeking. There is nothing to prove that indeed the computer was broken down at the material time, see **Alliance Insurance Corporation Ltd vs Arusha Art Ltd, Civil Application No. 33 of 2015** CAT (unreported):

*"Extension of time is a matter for discretion of the Court and that the applicant must put material before the Court which will persuade it to exercise its discretion in favour of an extension of time."*

That above position ensures that no frivolous applications are granted to the detriment of the trite law that litigation has to come to an end as held

in **Stephen Masato Wasira v Joseph Sinde Warioba and the Attorney General [1999] TLR 334.**

In the circumstances, I am of the view that this application has no any merits. In the circumstances the applicants have failed to account for each day of the delay. The affidavit of the officer in-charge of the prison, has nothing in substance to advance the applicants' application because it is hearsay evidence. The position was stressed in **Bushiri Hassan v Latifa Lukio Mashayo**, Civil Application No. 192/20 of 2016 CAT (unreported) where it was held:


*"... Delay of even a single day has to be accounted for otherwise, there would be no point of having rules prescribing periods within which certain steps have to be taken."*

In fine this application is devoid of merits. It is dismissed.

It is so ordered.

**DATED** at **SUMBAWANGA** this 13<sup>th</sup> day of May 2022.



  
J. F. NKWABI  
**JUDGE**