

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

AT TABORA

MISC. CRIMINAL APPLICATION NO. 39 OF 2021

SAID S/O SELEMANI @ LUGENZI.....1ST APPLICANT

BUNDALA S/O MAJALIWA2ND APPLICANT

VERSUS

THE REPUBLICRESPONDENT

RULING

Date: 25/3/2022 & 25/3/2022

BAHATI SALEMA, J.:

The applicants, **SAID S/O SELEMANI @ LUGENZI** and **BUNDALA S/O MAJALIWA** lodged this application under the provisions of Section 361(2) of the Criminal Procedure Act, Cap. 20 [R.E 2019] and Section 14 of the Law of Limitation Act, Cap. 89 [R.E 2019]. It is supported by an affidavit sworn by the applicants.

The applicant is praying for the following orders:

- 1. An application for enlargement of time to file both the notice and petition of appeal be allowed*

2. Any other order as this honourable court may deem fit and just to grant in the circumstances of this application.

When the matter was called for hearing, the applicants who were self-represented while the respondent was represented by Mr. Kajiru Miraji, Senior State Attorney for the Republic.

In his submission, the applicants prayed for this court to adopt their affidavits to form part of their submission. The affidavit in support of the application reveals that they were both arraigned before the District Court of Urambo in Criminal Case No. 8,10 and 25 of 2020 where they stood trial, jointly and together with BUNDALA S/O MAJALIWA @ MAGANGA and JUMANNE S/O SELEMANI, the latter person not being party to this application. After a full trial, they were all found guilty, convicted and sentenced in all three criminal cases save for JUMMANNE S/O SELEMANI who was convicted and sentenced only Criminal Case No. 25 of 2020.

Dissatisfied they gave notices of appeal to the trial court well within time as required by the law, was in respect of all cases in which they were convicted and sentenced. Owing to the lengthy of the custodial sentence they were sentenced namely a total of 55 years imprisonment they were relocated to Uyui Central Prison at Tabora for want of maximum security, this was on 23/2/2021. While at Uyui

Central Prison, they received copies of the judgments in Criminal Cases No. 8, 10 & 25 of 2020 and prepared and lodged petitions of appeal in respect of cases in which they were convicted and sentenced. At the time of lodging the appeals as averred in paragraph 6 of this affidavit, the notice of appeal in respect of Criminal Case No. 10 of 2020 it is whereabouts could not be immediately traceable. Neither at the trial court nor records of prisoner at Uyui Central Prison or at Urambo Remand Prison. They only managed to lodge Dc. Criminal Appeal No. 41/2021 in respect of Criminal Case No. 8 of 2020 which is pending before the High Court of Tanzania at Tabora (Hon. A. S. KHAMIS, J) and Dc. Criminal Appeal No. 35/2021 in respect of Criminal Case No. 25 of 2020 pending before the RM's Court of Tabora (with extended jurisdiction).

To date, the notice of appeal in respect of Criminal Case No. 10 of 2020, District Court of Urambo is nowhere to be seen, hence this application.

In reply, the respondent supported the application. The respondent submitted that applicants' affidavits in paragraphs 4, 5, 6, 7 and 8 have clearly provided sufficient reasons to grant the application. He prayed to this court to grant the application as prayed.

In rejoinder, the applicants had nothing more to add.

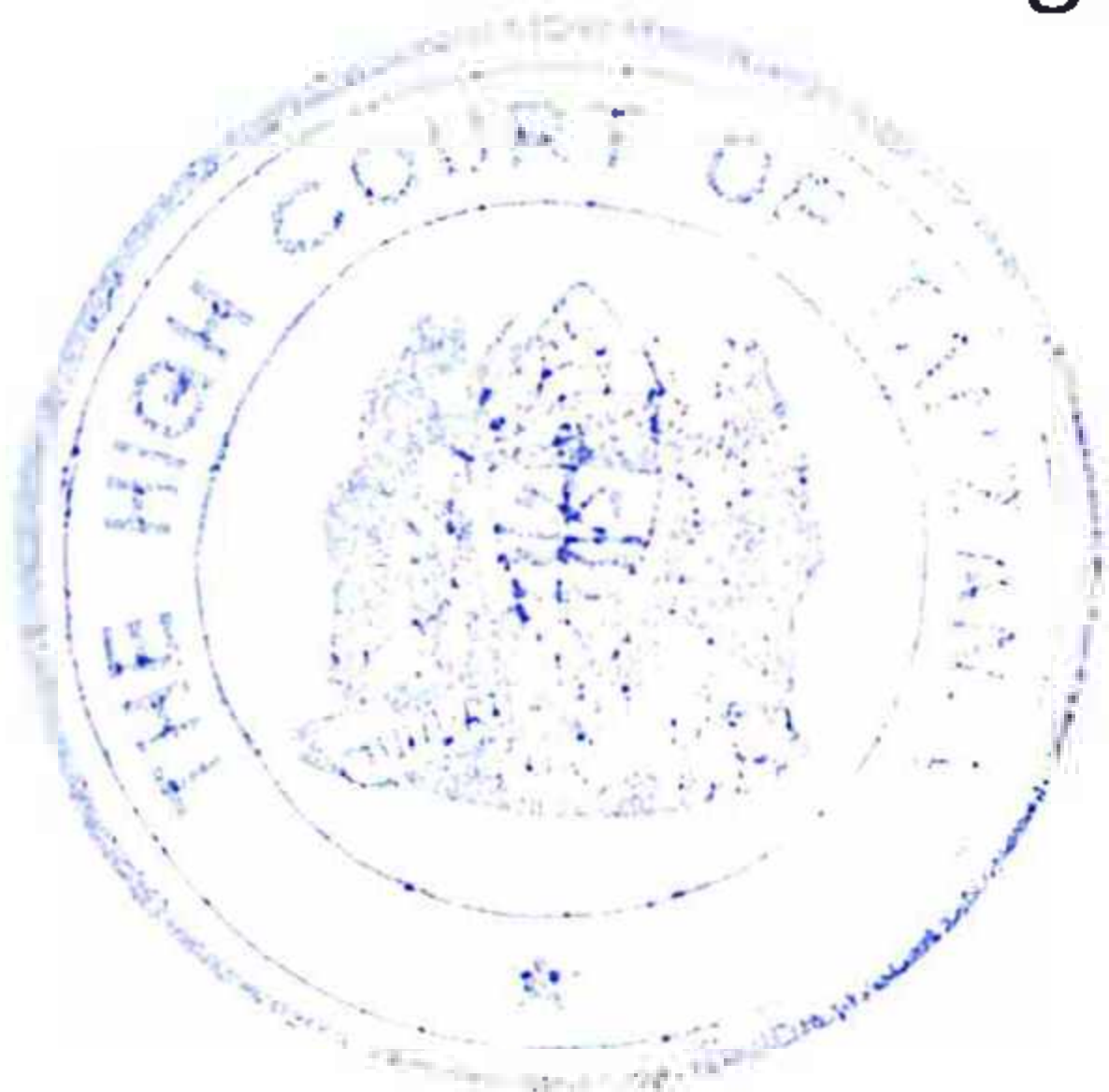
Having carefully heard submissions from both parties, the issue is whether the application has merit.

Section 361(2) of the Criminal Procedure Act, Cap. 20 provides for the extension of time upon sufficient reasons.

The court has gone through para 4, 5 6,7 and 8 of the affidavit and found that the applicants have shown sufficient reasons for the extension of time. As rightly conceded by the State Attorney, the applicants through their affidavits have adduced good cause for their delay.

For this reason the application is hereby granted. The applicant must file a fresh notice of appeal within 10 days and a petition of appeal within 30 days from the date of this ruling.

Order accordingly.



A handwritten signature in blue ink, appearing to read 'A. Bahati Salema'.

A.BAHATI SALEMA

JUDGE

25/3/2022

Ruling delivered under my hand and Seal of the court in Chamber this 25th day March, 2022 in the presence of both parties.

Bahati

A. BAHATI SALEMA

JUDGE

25/03/2022

Right to appeal is fully explained.

Bahati

A. BAHATI SALEMA

JUDGE

25/03/2022

