

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF MUSOMA

AT MUSOMA

Misc. CRIMINAL APPLICATION No. 58 OF 2021

(Arising from the District Court of Serengeti at Mugumu in Criminal Case No. 85 of 2014)

ABDUL RAMADHAN APPLICANT

Versus

REPUBLIC RESPONDENT

RULING

19.05.2022 & 19.05.2022

F.H. Mtulya, J.:

The present applicant, Mr. Abdul Ramadhan, was convicted and sentenced by the **District Court of Serengeti at Mugumu** (the district court) in **Criminal Case No. 85 of 2014** (the case) and was transferred to several prisons authorities including Serengeti Prisons in Mara Region and Kitai in Songea, Ruvuma Region. On 24th November last year, the applicant lodged an application for enlargement of time in this court to file an appeal out of time to protest the decision of the district court in the case.

The applicant registered only one (1) reason of delay to persuade this court to decide in favour of the application, *viz.* transfer of several prisons authorities and the fault in delay was caused by the prisons administration. In his affidavit at the third paragraph, the applicant asserts that the right of appeal is both

statutory and constitutional right to be cherished by every individual person. When the applicant was called for hearing of the application and to substantiate his allegation in this court on several occasions, including: 30th November 2021, 21st March 2022 and 16th May 2022, the applicant could not be available in Songea, even by use of science in teleconference. Today morning, this court made several efforts to access the applicant without success. Following the turbulences of accessibility of the applicant in Kitai Prison, and noting the third and fourth paragraphs in the applicant's affidavit display the reason of delay and constitutional right of appeal, Mr. Yese Temba, learned State Attorney, who appeared for the respondent supported the application without any reservations.

I have had an opportunity to glance the record of this application, section 361 (2) of the **Criminal Procedure Act** [Cap. 20 R.E. 2019] (the Act) and article 13 (6) (a) of the **Constitution of the United Republic of Tanzania** [Cap. 2 R.E. 2002] (the Constitution), and found that the law in section 361 (2) of the Act allows this court to grant enlargement of time to applicants who produce good cause and noted that every individual person has the right of appeal.

In interpreting the words good cause, the practice of this court and our superior court has been that applicants for enlargement of time are required to adduce relevant materials to persuade this court

in favour of applications (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 cited decision of **Zuberi Nassor Moh'd v. Mkurugenzi Mkuu wa Shirika la Bandari Zanzibar** (supra), at page 9, the Court of Appeal had put in place a very important clause that: *as what constitutes sufficient cause, it has been explained in most cases it depends on the circumstance of each case*. Similar statement was recorded by the same court in the precedents of **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.

I think, in my considered opinion, the present case is one of the peculiar cases and invites peculiar interpretation of the law in section 361 (2) of the Act with regard to *good cause*. The applicant claimed that he was under the control of the prisons authorities and has been transferred in several prisons of this State. It is obvious that persons under prisons custody are under the guardianship of prisons authorities and their freedom to liberty and movements are regulated by the authorities. It is fortunate that the present cause of delay was considered and found to have merit by the Court of

Appeal and this court (see: **Yusufu Hassan v. Republic**, Criminal Application No. 50/12 of 2017, **Dickson Prosper @ Mutabuzi v. Republic**, Misc. Criminal Application No. 22 of 2021 and **Saidi Ramadhani Ndevumbili v. Republic**, Misc. Criminal Application No. 13 of 2021).

Having said so, I think, this application was registered with sufficient materials depicting good cause. I also thank Mr. Temba for acting as an officer of this court for noting difficulties associated with persons in prison custody and cherishing of article 13 (6) (a) of the Constitution. Noting the applicant is currently in Kitai Prison custody at Songea in Ruvuma Region, and we had difficulties in accessing him, I have decided to grant the applicant thirty (30) days leave to file notice of intention to appeal and forty five (45) days leave to file petition of appeal in this court without any further delay. I further order Deputy Registrar of this court to communicate with prisons authorities at Musoma in Mara Region for easy access of the applicant and accordingly inform him the decision of this court on the application.

It is so ordered.

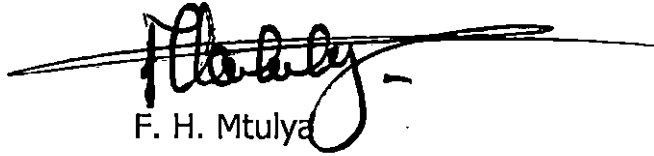


F. H. Mtulya

Judge

19.05.2022

This Ruling is delivered in chambers under the seal of this court
in the presence of the learned State Attorney, Mr. Yese Temba and
in absence of the applicant, Abdul Ramadhan.

A handwritten signature in black ink, appearing to read 'F. H. Mtulya', with a long horizontal flourish extending to the right.

F. H. Mtulya

Judge

19.05.2022