

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF ARUSHA
AT ARUSHA**

MISC. CRIMINAL APPLICATION NO. 06 OF 2020

(Originating from Criminal Case No. 58/2020, Mbulu District Court at Mbulu)

PETRO SAFARI @ MANYIKA1ST APPLICANT

FRANK PETRO @ NGALASONDGO2ND APPLICANT

VERSUS

THE REPUBLIC RESPONDENT

RULING

18/5/2022 & 18/5/2022

KAMUZORA, J.

The Applicants preferred this application for extension of time to file the notice of appeal out of time as well as to lodge their appeal out of time against the decision of the District Court of Mbulu at Mbulu in Criminal Case No. 58 of 2020. The application was brought by way of a chamber summons under section 361(2) of the Criminal Procedure Act [Cap 20 R.E 2019] and was supported by the joint affidavit deposed by the Applicants.

The brief background of the matter is such that, the Applicants were charged of the offence of armed robbery contrary to the provision of section 287 A of the Penal Code Cap 16 R.E 2002. The trial court found the Applicants guilty, convicted and sentenced them to serve thirty years imprisonment. Aggrieved by the conviction and sentence, the Applicants intend to appeal but found themselves out of time thus preferred this application so that they can appeal to this court out of time.

When the matter was called for hearing the Applicants appeared in person with no any legal representation while Ms. Amina Kiango, learned State Attorney appeared for the Respondent. at very early stage of hearing Ms. Amina Kiango informed this court that, the republic did not intend to contest the application. She was of the view that reading the Applicants reasons as contained under the Applicant's affidavit suffice the grant of the application for extension of time hence prays the court to grant the Applicants their application for extension of time to appeal.

The Applicants had no further useful submission to make with regard to their application but rather prayed for their application to be granted.

Reading the Applicants' affidavit filed in support of the chamber application it shows that immediately after being sentenced the Applicants lodged a notice of intention of appeal but when they later received the proceedings and judgment, they were unable to get legal assistance for the preparation of petition of appeal and file the same on time. They claimed that, they could not afford an advocate and as they were prisoners, they only relied on assistance from the prison officers and by the time they secured such assistance the time to appeal had already lapsed. They preferred an application to this court for extension of time to file an appeal out of time which was filed on 28/4/2021 but the same was struck out for being defective hence this current application by the leave of the court.

The Applicants contended that, the delay in filling the appeal is out of their ability as prisoners they depend on the assistance which the same could not be obtained on time. That, they intend to challenge the decision of the district court and they can only do the same if this application is granted and that they have an overwhelming chance of success to succeed in that appeal.

I have considered the chamber application, the affidavit filed in support of the application and the fact that the State Attorney acting for

the interest of the republic did not contest the application. I am aware that the grant or deny of the application like this of extension of time is well within the discretion of the court and the Court upon good cause being shown may extend time. However, I am mindful of the fact that, there is no hard and fast rule in defining what it means by the term "good cause." The power vested in the Court in extending time must be exercised judiciously, particularly when determining good cause by considering circumstances of each case.

The facts deposed by the Applicants to me sound reasonable and convincing to grant the application. It was also considered so by the Respondent's side and that is why they opted not to contest the application. On that basis, this court do hereby grant the application for extension of time for the Applicants to appeal out of time. The Applicants is granted leave to file the appeal to this court within thirty (30) days from today.

Order accordingly,

DATED at **ARUSHA** this 18th day of May, 2022




D.C. KAMUZORA

JUDGE