

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF MUSOMA**

AT MUSOMA

Misc. CRIMINAL APPLICATION No. 21 OF 2021

(Arising from the District Court of Serengeti at Mugumu in Economic Case No. 160 of 2019)

MAKARANGA SWEA LIMBE APPLICANT

Versus

REPUBLIC RESPONDENT

RULING

06.06.2022 & 06.06.2022

Mtulya, J.:

Mr. Makaranga Swea Limbe (the applicant) was aggrieved by the judgment of the **District Court of Serengeti at Mugumu** (the district court) in **Economic Case No. 160 of 2019** (the case) hence lodged a notice of intention To appeal and petition of appeal within time, but was declined by summons and follow-ups of the prisons authorities hence his notice and appeal could not be traced. According to the applicant, he is still interested in preferring an appeal to exercise the right to be heard at our superior court.

Upon perusing the record of the application, and specifically the affidavit of the applicant, an officer of this court, Mr. Tawabu Yahya, appearing for the Republic, did not protest the application and let it to this court to decide the matter. This court is guided by section 361 (2) of the **Criminal Procedure Act** [Cap. 20 R.E. 2019] (the Act), article 13 (6) (a) of the **Constitution of the United Republic of**

Tanzania [Cap. 2 R.E. 2002] (the Constitution), and the precedents in **Dar Es Salaam City Council v. Jayantilal P. Rajani**, Civil Application No. 27 of 1987 & **Yusufu Hassan v. Republic**, Criminal Application No. 50/12 of 2017.

The law in section 361 (2) of the Act allows applications like the present one, whereas article 13 (6) (a) of the Constitution enshrined the right to be heard. The precedent in **Dar Es Salaam City Council v. Jayantilal P. Rajani** (supra) states that there are no pigeons' holes for enlargement of time and all depends on production of sufficient reasons whereas the precedent in **Yusufu Hassan v. Republic** (supra) recognised the reason of delay for persons who are in prisons authorities. The practice has been cherished in a number of decisions of this court (see: **Abdul Ramadhani v. Republic**, Misc. Criminal Application No. 58 of 2021; **Juma Moroka Masyora v. Republic**, Misc. Criminal Application No. 23 of 2023; and **Gasaya Bwana @ Chacha v. Republic**, Misc. Criminal Application No. 22 of 2022).

Having noted the law in statutes and practice of this court and Court of Appeal in precedents, I think, in my considered opinion, this court cannot be detained to call for other interpolations in restricting the enjoyment of the right to be heard enacted in mother law, the Constitution. The present applicant has produced good cause in claiming that his initial notice and petition of appeal was filed within

time, but prisons authorities had delayed him in following up the status of documents in this court.

In the end, I grant the application in favor of the applicant. However, for the applicant to cherish the right, he must prefer the notice of intention to appeal within thirty (30) days and lodge petition of appeal within forty five (45) days from the date of this Ruling without any further delay.

It is so ordered.



F. H. Mtulya

Judge

06.06.2022

This Ruling is delivered in chambers under the seal of this court in the presence of the learned State Attorney, Mr. Tawabu Yahya and in absence of the applicant, Makaranga Swea Limbe.

F. H. Mtulya

Judge

06.06.2022