

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF MUSOMA

AT MUSOMA

Misc. CRIMINAL APPLICATION No. 54 OF 2022

(Arising from the District Court of Serengeti at Mugumu in Economic Case No. 54 of 2019)

GASAYA BWANA @ CHACHA APPLICANT

Versus

REPUBLIC RESPONDENT

RULING

06.06.2022 & 06.06.2022

Mtulya, J.:

The present applicant, Mr. Gasaya Bwana @ Chacha, was convicted and sentenced twenty years by the **District Court of Serengeti at Mugumu** (the district court) in **Economic Case No. 54 of 2019** (the case) in three (3) economic offences. The applicant was aggrieved by the decision in the district court hence filed a notice of intention to appeal and petition of appeal out of time and were struck out on 28th April 2021 by this court for want of time limitation. Being vigilant to prefer an appeal to this court, he filed the present application and displayed two (2) reasons of delay in his affidavit, namely: first, he had registered an appeal, but it was struck out for want of time limitation; and second, the delay was caused by the prison management.

When the applicant was called today to explain the reasons of delay, as a lay person in prison authorities, he briefly explained that

he had preferred a notice and appeal in this court, but was struck out for want of time limitation and he preferred the present application to abide by the law in filing notice of intention to appeal and appeal out of time in this court and finally prayed this court to grant the application. Noting the prayer is part of the right to be heard and precedents allow persons in prisons to be considered differently in applications for enlargement of time, Mr. Tawabu Yahya, learned State Attorney, for the Republic, did not protest the application.

I have glanced the record of the present application and section 361 (2) of the **Criminal Procedure Act** [Cap. 20 R.E. 2019] (the Act) and noted the constitutional right of appeal and to be heard enacted under article 13 (6) (a) of the **Constitution of the United Republic of Tanzania** [Cap. 2 R.E. 2002] (the Constitution), and think that the law in the Act and precedents allow consideration and grant of the applications like the present one.

However, applicants for enlargement of time must produce relevant materials to persuade this court to grant 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 precedent 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.

In the present application, the applicant claimed that he was under the control of the prisons authorities and had preferred the initial appeal, but it was turned down by this court for want of time limitation and proper record of the court. The applicant is a lay person in prison custody. It is obvious that he is under the guardianship of prisons authorities and his freedom to liberty and movements is regulated by the authorities.


It is fortunate that one of the causes of delay in the present application 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). I think the applicant may benefit from the practice.

Having said so, and noting the cited above precedents, I think, the applicant has registered sufficient materials depicting good cause. I also thank Mr. Tawabu for acting as an officer of this court in noting difficulties associated with persons in prison custody. Noting the applicant is currently at Mugumu Prison of Serengeti District in Mara Region, I have decided to grant him thirty (30) days leave to file notice of intention to appeal and forty five (45) days leave to prefer an appeal in this court without any further delay.

It is so ordered.





F. H. Mtulya

Judge

06.06.2022

This Ruling was delivered in chambers under the seal of this court in the presence of the learned State Attorney, Mr. Thawabu Yahya and in the presence of the applicant, Mr. Gasaya Bwana Chacha, through teleconference attached at Serengeti Prison in Mara Region.


F. H. Mtulya

Judge

06.06.2022