

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(DAR ES SALAAM SUB-REGISTRY)
AT DAR ES SALAAM**

MISC. CRIMINAL APPLICATION NO. 19 OF 2023

(Originating from Criminal Appeal No. 19 of 2022 of the District Court of Ilala)

ZULFIKA HAJI.....1ST APPLICANT

NUREEN HAJI.....2ND APPLICANT

VERSUS

MARIA VAZI DSOUZA.....RESPONDENT

RULING.

S.M. MAGHIMBI, J:

The two applicants herein are serving a custodial sentence following their convictions in Criminal Appeal No. 19/2022 at the District Court of Ilala on the 15th day of November, 2022. They are out of time in lodging their appeal in this court hence they have lodged this application under the provisions of Section 25(1)(a) &(b) of the Magistrates Courts Act, Cap. 33 R.E 2019 and Section 95 of the Civil Procedure Code, [Cap. 33 R.E 2019]. They are moving the court to extend time within which they can lodge their appeal. They are also seeking for any other order that the court may deem fit to grant. The application was lodged by way of an affidavit supported by an affidavit of Mr. Saidi Abdallah Azizi, learned Advocate representing the

applicants, an affidavit which was affirmed on the 04th day of February, 2023.

On her part the respondent opposed the application by filing a counter affidavit dated 20th day of March, 2023. When this matter came for hearing on the 06th day of April, 2023, Mr. Azizi represented the applicants while the respondent appeared in person and unrepresented. In his submissions to support the application, Mr. Azizi revealed the main reason for the delay to be that the applicants were in remand custody and could not get any legal assistance. Further that one of the applicants was moved from Segerea to Ukonga prison and there was no coordination of the officers of prison to help them lodge their appeal within time. His submission was that this reason justified extension to lodge appeal. He supported his submissions by citing the case of **Rhobi s/o Kitang'ta Chacha vs The Republic (Criminal Application 58 of 2022) [2023] TZHC 305 (16 February 2023)**; where it was held:

"the applicant is a prisoner as stated under para 4 and 5 of the oath, It is clear that the applicant failed to get copy of relevant documents in time based on foregoing analysis, the applicant pursued for extension of time and has exhibited good cause bearing in mind that he is in prison as was observed in the case of Maneno Muyombe & Others Vs. R Criminal Appeal No.

435/2016 (unreported). Being inmates serving time in prison, the appellant invariably had no control over the affair in that there were necessary at the mercy of the officer in charge of their prisons as it were in this regard it was unfair to expect too much from them. In consequence, application is allowed”

His conclusive submissions were that for that reason and the cited case, this court allow the application and extend time to the applicant to lodge their appeal in the interest of justice.

In reply, the respondent, who is the biological mother of the applicants, did not have any substantive submissions to make. She said that she objecting the grant of this application because being in prison is what the applicants have cultivated in their lives so they have to pay for it.

Having heard the submissions of the parties and the records of this application, I am in subscription with the holding of my sister Judge Hon. Komba in the cited case of Rhobi **s/o Kitang'ta Chacha** (Supra) **that by being** inmates serving time in prison, the appellant could not have control over the affairs on procurement of their documents. All the affairs in making follow ups of the necessary documents remains in the mercy of the officer in charge of their respective prisons where they were held. We cannot, under the circumstances ignore that fact and expect the applicants to act promptly as would have been expected

from someone who is at liberty. Furthermore, the applicants are serving a custodial sentence hence it will only be fair for them to be given another chance to have their convictions scrutinized by a higher court. It is for the aforesaid reasons that this application is hereby allowed. Time is extended for the applicants to lodge their intended appeal which should be lodged in this court within thirty days of the date of this ruling. For avoidance of any further delay, copies of this ruling to be immediately dispatched to the applicants in their respective prisons where they are serving their sentences.

Dated at Dar-es-salaam this 12th day of April, 2023




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S.M. MAGHIMBI
JUDGE