

THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

(MTWARA DISTRICT REGISTRY)

AT MTWARA

MISC. CRIMINAL APPLICATION NO.10 OF 2023

(Originating from Tandahimba District Court in Criminal Case No.75 of 2022)

ATHUMANI SAID CHAMPUNGA @ TETE.....1ST APPLICANT

BARUAN CHUNLEY AHMAD @ WAKUTWAKA.....2ND APPLICANT

VERSUS

THE REPUBLIC.....RESPONDENT

RULING

31/5/2023

LALTAIKA, J.

The applicants herein, **ATHUMANI SAID CHAMPUNGA @ TETE** and **BARUAN CHUNLEY AHMAD @ WAKUTWAKA**, the first and second applicant respectively are seeking extension of time within which to file a Petition of Appeal out of time. The applicants are moving this court under section 361(2) of the Criminal Procedure Act [Cap. 20 R.E. 2002] now the **REVISED EDITION 2022**. This application is supported by an affidavit

jointly affirmed by the applicants on 7/3/2023. It is noteworthy that this application has not been resisted by a counter affidavit of the respondent.

When this matter was called on for hearing, the applicants appeared in person, unrepresented while **Ms. Atuganile Nsajigwa & Mr. Melchior Hurubano**, both learned State Attorneys, appeared for the respondent.

At the outset Ms. Nsajigwa did not object the application. In support of the application the learned State Attorney stressed that it is true that the trial court delayed to supply the certified copies of proceedings and judgement to the applicants. She averred further that the applicants were transferred from Newala Prison to Lilungu Prison in Mtwara Region. To this end, Ms. Nsajigwa argued this court to grant the application for the sake of justice.

In rejoinder, the first applicant submitted that as to the matter at hand he has nothing to add. However, he contended that he had another case which is yet to be filed but he wishes to do so. Regarding the second applicant he argued this court not to take long to deliver the decision.

Having gone through the application by the applicants and submission of both parties, I am inclined to decide on the merit or otherwise of the application. In the instant application the main reasons for the delay are featured under paragraphs 5, 6, 7 and 8 of the jointly affirmed affidavit as well as the respondent's oral submission are that; **one**, delay in receipt of a copy of judgement and proceedings. **Two**, transfer from Newala Prison to Lilungu Prison in Mtwara Region.

In view of the above reasons, it is apparent that the delay was caused by factors beyond the ability of the applicants to control and cannot be blamed on them.

The next issue I am called upon to resolve is whether or not the reasons advanced by the applicants amount to good cause. Our law does not define what amount to good/sufficient cause. However, in the case of **Regional Manager, TANROADS Kagera v. Ruaha Concrete Company Ltd**, Civil Application No.96 of 2007(unreported) it was held:-

"Sufficient reasons cannot be laid down by any hard and fast rule. This must be determined in reference to all the circumstances of each particular case. This means the applicant must place before the court material which will move the court to exercise its judicial discretion in order to extend the time."

As to the matter at hand, I can safely say that the applicants have advanced good cause for their delay to lodge their Petition of Appeal out of time. Indeed, the chain of events explained in the applicants' joint affidavit and also in respondent's oral submission shows that in spite of inability to follow up on their case due to the circumstances beyond their control as prisoners, they have not given up. I am convinced that the applicants have not only advanced good cause but also exhibited great diligence in pursuing his appeal. They have not displayed any apathy, negligence or sloppiness in the prosecution he intends to take as was emphasized in the case of **Lyamuya Construction Co. Ltd. vs. Board of Registered Trustees of Young Women Christian Association of Tanzania**, Civil Application No 2 of 2020 [2011] TZCA4.

For the foregoing reasons, I find and hold that the applicants have advanced sufficient reasons for the delay to warrant this court to exercise its discretion to grant the enlargement sought. Therefore, the applicants are hereby given forty-five (45) days to lodge their Petition of Appeal effective from the receipt of this ruling.

It is so ordered.



E.I. LALTAIKA

A handwritten signature in blue ink, appearing to read "E.I. Laltaika".

**JUDGE
31.5.2023**

Court: This ruling is delivered under my hand and the seal of this court on this 31st day of May 2023 in the presence of Ms. Atuganile Nsajigwa assisted by Mr. Melchior Hurubano, both learned State Attorneys while the applicants have appeared in person, unrepresented.



E.I. LALTAIKA

A handwritten signature in blue ink, appearing to read "E.I. Laltaika".

**JUDGE
31.5.2023**