

THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
MBEYA SUB - REGISTRY
AT MBEYA

MISC. CRIMINAL APPLICATION NO. 11303 OF 2024

(Originated from the District Court of Mbarali at Rujewa, Criminal Case No. 24/2024)

SAID CHALAJI..... 1ST APPLICANT

EXAUD JAPHET.....1ND APPLICANT

VERSUS

THE REPUBLIC.....RESPONDENT

RULING

23 May 2024 & 23 May 2024

SINDA, J.:

The applicants brought this application under Section 361 (2) of the Criminal Procedure Act, Cap 20 R.E 2022 (the **CPA**). The applicants pray for the following orders:

- (i) That – the Hon. Court may be pleased to grant the applicants leave for an extension of time within which to lodge notice of appeal and petition of appeal out of time in Criminal Case No. 24 of 2022.*
- (ii) That – any other relief as this Hon. Court may deem fit and just to grant.*

The chamber application is dully supported by an affidavit sworn by both applicants. The applicants were convicted for the offence relating to the Economic Case and sentenced to serve twenty (20) years in jail.

At the hearing, the first applicant Mr. Said Chalaji appeared in person and unrepresented. This court was informed that the second applicant Exaud Japhet was released from jail. The respondent was represented by Mr. Augustino Masesa, learned State Attorney. The first applicant briefly prayed the court to adopt his reasons set forth in the affidavit. Mr. Magesa did not object the application.

The first applicant stated that they received the trial proceedings and copy of judgment on 30 November 2023. They prepared a petition of appeal and handed it to the officer in charge of Ruanda Central Prison for transmitting to court. They waited for a long time to be called to the High Court to hear their appeal. They made an inquiry to the prison authority and were informed that their appeal was forwarded out of time due to the challenges of the new court system of filling appeal documents. They concluded by praying this Honorable Court to grant them extension of time as the appeal being out of time was not their fault and beyond their control. On the other hand, the respondent opted not to file counter affidavit.

Having considered the submissions of both parties and examined the grounds stated in the applicants' affidavit, the question is whether there is any justification for this court to exercise its discretion under Section 361 (2) of the CPA. The said provision states that:

"The High Court may, for good cause, admit an appeal notwithstanding that the period of limitation prescribed in this section has lapsed"

From the records it is clear that their petition of appeal was lodged late to the Court due to the challenges of the new court system of filling appeal documents.

That being the case and considering that the applicants are currently serving time in prison, they have no control over their affairs. The filling was at the mercy of the prison authority. It has been decided in the number of cases that being in prison, the applicant loses control of the appeal process thus amounting to sufficient cause for the delay. See: **Buchumi Oscar vs Republic**, Criminal Appeal No. 295 "B" of 2011 (CAT, unreported), **William Ndingu @ Ngoso vs Republic**, Criminal Application No. 3 of 2014 (CAT,

unreported) and **Maneno Muyombe and Another vs Republic**, Criminal Appeal No. 435 of 2016.

As a result, I find the applicants advanced good cause for the delay. I grant the application.

Dated at Mbeya on this 23 day of May 2024.



**A. A. SINDA
JUDGE**

The Ruling is delivered on this 23 day of May 2024 in the presence of the applicant and Mr. Augustino Masesa, learned State Attorney for the respondent.



**A. A. SINDA
JUDGE**