

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE SUB-REGISTRY OF MANYARA
AT BABATI**

MISCELLANEOUS CRIMINAL APPLICATION NO. 38485 OF 2023

*(Arising from Criminal Case 17 of 2022 of the Court of Resident Magistrate of
Manyara)*

HASSANI MOHAMEDI ALLY.....APPLICANT

VERSUS

THE REPUBLIC.....RESPONDENT

RULING

13th and 23rd February 2024

MIRINDO, J.:

The prisoner, Hassani Mohamedi Ally, is seeking extension of time to appeal out of time. This application is subsequent to his conviction and sentence by Manyara Resident Magistrate's Court for the offence of unlawful possession of narcotic drugs contrary to section 15A (1) and (2) of the Drugs Control and Enforcement Act [Cap 95 RE 2019] on 27th March 2023.

In his supporting affidavit, Hassani states that he delayed in commencing the appeal process on account of being transferred to a different prison as a result of which his documents were misplaced. The other reason is that he had some difficulty in accessing printing facilities at Babati District Prison as they were out of order. These facts were corroborated by the additional affidavit filed by the officer in-charge of Babati District Prison, Nahman Waziri Koko.



These facts stood uncontroverted as the Respondent Republic did not file a counter affidavit. There are various decisions of the Court of Appeal that it is inappropriate for the Respondent Republic to dispute the factual statements in the affidavits of prisoners by statements from the bar: *Daud Abdallah v R*, Criminal Appeal 175 of 2004, Court of Appeal of Tanzania at Mwanza (2007); *Sospeter Lulenga v R*, Criminal Appeal 108 of 2006, Court of Appeal of Tanzania at Dodoma (2007); and *Alfred Chinga v R*, Criminal Appeal 73 of 2008, Court of Appeal of Tanzania at Mbeya (2011).

It remained for the learned State Attorney, Esther Malima, to raise points of law regarding them. I do not agree with the submissions of the learned State Attorney that the facts deponed do not constitute sufficient reasons for extension of time. She argued that Hassani Mohamedi Ally was negligent in dealing with his documents while he was being transferred from one prison to another, and that there was a long delay of six months in bringing the present application.

The facts deponed by the applicants and the officer in charge of Babati District Prison have been held to constitute good cause by the Court of Appeal in *Nzeyimana s/o Zeno v Republic* (Criminal Appeal 458 of 2007) [2013] TZCA 380 (19 April 2013) and *Sostenes s/o Nyazagiro v Republic* (Criminal Appeal 12 of 2013) [2013] TZCA 434 (7 May 2013). I have no reason to hold a contrary view.



For the above reasons, I extend the time for lodging notice of intention to appeal which should be lodged within ten days from the date of the delivery of this ruling and thereafter the petition of appeal should be lodged within forty five days to the High Court. The prison officers at Babati District Prison should assume the responsibility to process the appeal according to law.

Dated at Babati this 22nd day of February 2024



F.M. Mirindo

JUDGE

Court: Ruling delivered in chambers in the presence of the Applicant and Ms Leah Vyosena, State Attorney for the Respondent this 23rd day of February 2024. B/C: Lackson Rojas present.



F.M. Mirindo

JUDGE

23/2/2024