

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

MISCELLANEOUS CRIMINAL APPLICATION No. 38091 OF 2023

(Arising from Criminal Case No. 67 of 2022 of Mbulu District Court)

PAULO FRANCIS.....1ST APPLICANT

PAMPFIL GW Aidin.....2ND APPLICANT

VERSUS

THE REPUBLIC.....RESPONDENT

RULING

16th and 23rd February 2024

MIRINDO J.:

The two prisoners, Paulo Francis and Pamphil Gwaidin, were jointly convicted of the offence of armed robbery and sentenced according to the law had their appeal struck out by this Court (Kahyoza, J) for want of notice of intention to appeal. They are back to this Court with an application for extension of time to lodge a notice of intention to appeal and petition of appeal slightly over a month after their appeal was struck out. In their joint affidavit, the prisoners blame the prison officers for the defective notice of appeal.

In his counter-affidavit, the learned State Attorney, Johnson Charles Ndibalema, averred that a defective notice of intention to appeal is not a sufficient cause for extension of time and demands a “strong proof” that the defect in the notice was occasioned by prison officers.



At the hearing of the application, the prisoners attributed defects in the notice of appeal to the admission office at Mbulu Prison. Adopting his counter-affidavit, Mr Johnson Charles Ndibalema argued that it was the responsibility of the prisoners and not prison officers to prepare the notice of intention to appeal and so the prisoners were negligent as was held in *Mkapa Kisori v Republic* (HC Misc. Criminal Application 28 of 2023) [2023] TZHC 20290 (22 August 2023). The learned State Attorney stated that the prisoners have not accounted for each day of the delay from when their appeal was struck out by this Court. For these reasons, the learned State Attorney was of the view that the application lacks merit and should be dismissed.

The prisoners, in the present application are deemed to have been conducting a defective appeal. This is because they expressed their intention to appeal and lodged petition of appeal in time but their notice was declared defective. There is an established principle in civil applications for extension of time to appeal, which I find it appropriate to apply to criminal applications that conducting a defective proceeding diligently is a good cause for extension of time. Delays arising in such cases are famously referred to as “technical delays” a phrase commonly attributed to the decision of Mfalila, JA in *Fortunatus Masha v William Shija and another* [1997] TLR 154 .

I have not been satisfied that the principle is inapplicable in the matter before me. I therefore, grant extension of time to appeal to Paulo Francis and Pamphil Gwaidin. They should give their notice of intention to appeal within



ten days from the date of the delivery of this ruling and then present a petition of appeal within forty five days. It remains the responsibility of prison officers at Babati District Prison to process their appeal according to the law.

Dated at Babati this 22nd day of February 2024



F.M. Mirindo

JUDGE

Court: Delivered in chambers in the presence of the Applicants and Ms Mwaidi Chuma for the Respondent Republic this 23rd February 2024. B/C: Lackson Rojas present.



F.M. Mirindo

JUDGE

23/2/2024