

TANZANIA / JUDGMENT

criminal decision 2025 03 06 13 25 59

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6 March 2025

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THE JUDICIARY OF TANZANIA IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA AT
KIGOMA MISCELLANEOUS CRIMINAL APPLICATION NO. 000032213 OF 2024 AMOS
ISAKA COMPLAINANT / APPELLANT / APPLICANT VERSUS JOYNESS
NDOJIBWANI RESPONDENT / DEFENDANT

RULING

RWIZILE, J The applicant was charged in criminal case No. 43 of 2024 at the primary court of Kibondo. He was charged with the offence of stealing trees contrary to section 258(1) and 265, the penal code [CAP 16 R.E. 2022]. When he was arraigned, he denied the charges. Upon being tried, he was found guilty, convicted and sentenced to pay fine of TZS 300,000.00, or in default, to serve an imprisonment term of 6 months. He was however, not satisfied, and appealed to the district court. His appeal was not successful. When meditating what to do, time to appeal ran against him. This application therefore is for extension of time to file an appeal out of time. As it is usually the case, his application is filed by a chamber summons supported by the affidavit sworn by Mr. Michael Mwangati learned advocate who also stood for the applicant. In the affidavit, reasons for delay are stated on paragraph 7 of the affidavit: "That, the applicants appeal has chances of success as there are many errors and irregularities in the decision of Kibondo Primary Court and the first appellate court which is Kibondo District Court.

1. That both the trial and Appellate court erred in law by convicting the applicants on stealing trees without considering that there is a land dispute between the parties.
2. That the trial and appellant court erred in law on deciding the case regarding the property of the deceased person on failure to consider that both parties are not the administrators of the estate of the deceased " Given a chance to argue this application, Mr. Mwangati submitted that the decision of the trial court had many errors to include the appellant filed a case in her capacity and not as administratrix. According to him, the respondent testified that the trees belonged to her late husband. He further stated that the point was raised at the first appellate court but not accorded any weight. Page. 1 Hon. AUGUSTINE RWIZILE He cited the case of Marietha Gabo vs Adam Mtengu, (CAT), Civil Appeal No. 485 of 2022 to support the submission. Contesting the application, the respondent, who appeared in person, said she was an administratrix of the estate of the deceased as it was her evidence before the trial court. She asked this court to dismiss the application. Having perused parties' submissions,

I have, I think to be clear at once that, in an application for extension of time as it is this one, all the applicant is required to do, is not only to show that the delay to file an intended appeal was excusable by showing sufficient reasons which were out of his control to filed the appeal in time. That is to say, sufficient cause must be shown. But courts have as well invited applicants to plead and argue perhaps that there was a legal issue of sufficient importance to be argued in the intended appeal. Parties have always pleaded that as an illegality. For instance, in the case John Paulo Yusuph v. The Republic, (CAT), Criminal Appeal No. 582 of 2017 on pages 8-9, it held: "The law is settled that illegality alone may constitute good cause for extension of time." But in order for the court to do so, illegality must be shown in the affidavit supporting the application and plainly argued by the applicant. As shown above, paragraph 7 of the affidavit did not raise an issue of illegality, rather in my view, raised the be grounds of appeal. In his argument the learned counsel is inviting this court to consider those two points to allow this application. I do not think that was right. I think so because, he was either to show cause why there was a delay and if that delay was inordinate or not, that it was not caused by apathy or sloppiness or that, there was a point to be discussed which is of sufficient importance for the court to consider and therefore grant the application. Based on the above, findings of this court, I see no merit in the application, it is dismissed. Dated at KIGOMA this 6th of March 2025 . A. K RWIZILE JUDGE OF THE HIGH COURT Page. 2 Hon. AUGUSTINE RWIZILE

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CASE PAGE	https://chat.esheria.ai/case-law/tanzania/amos-isaka-v-joyness-ndojibwani-extensionoftime-tanzlii-2025

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