

TANZANIA / JUDGMENT

ECONOMIC APPLICATION CHACHA MARWA MWITA

COURT
TANZLIIDECIDED
20 November 2024

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IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA MUSOMA SUB - REGISTRY AT
MUSOMA ECONOMIC APPLICATION NO. 000027398 OF 2024 REFERENCE NO.
202409242000027398 (Originating from Economic Case No. 226 of 2022 in the District Court of
Serengeti) BETWEEN CHACHA S/O MARWA @ MWITA..... 1st APPLICANT MOI S/
O MARWA @ NYAITAGE..... 2nd APPLICANT VERSUS
REPUBLIC RESPONDENT

RULING

20th & 20th November, 2024 M. L. KOMBA, J. This is an application in respect of extension of time within which to file notice of intention to appeal and appeal out of time. The application was brought by way of chamber summons preferred under section 361(2) of Criminal Procedure Act [CAP 20 R.E 2022] and is supported by an affidavit deposed by the applicants. The respondent filed counter affidavit to contest the application. The applicants herein prayed this court to extend time from which they can lodge notice of appeal and appeal out of time from the decision of Page 1 of 5 the District Court of Serengeti in Economic Case No. 226 of 2022 where they were convicted and sentenced to 19 years in prison for the offences of unlawful entry into the Game Reserve, unlawful possession of weapon in Game Reserve and unlawful possession of Government Trophies contrary to the relevant provisions of the law. When the application was placed for hearing before me, the applicants represented for themselves while Ms. Natujwa Bakari, State Attorney appeared for the respondent. Submitting in support of their application, 1st applicant submitted that when they were sentenced, they showed intention to appeal but they were transferred to Tabora B prison then they were told there is no record in the system and they had to start afresh. In response, Ms. Natujwa Bakari submitted that the applicants' submission is contrary to what they have deposed in their affidavit. She proceeded that in their affidavit the applicants deposed that their appeal was struck out but they didn't attach the document to support the said averment. She added that the applicants failed to account for each day of delay as the law require. The counsel went further and state that the applicants didn't file the notice of intention to appeal on time as the notice does not require copy of judgment. She prayed the court to Page 2 of 5 dismiss the application as the applicants misused the time assigned by the law. Upon submissions of the parties, the issue here is the whether the applicants have successfully

registered good reason(s) for this court to grant them extension of time. It is settled law that in order the court to grant the application of this nature, the applicant has to assign good cause to move this court to do so. See section 361 (2) of the Criminal Procedure Act [CAP 20 R.E 2022]. And it is trite law that the factors to be considered in determining whether to grant the application depends on the nature and circumstances of the case. Some of the factors set by case law include, the length of the delay; whether the applicant have accounted for all the period of delay and demonstrated diligence and not laziness, negligence or sloppiness in taking the required step; whether the Court finds other sufficient reasons, such as the existence of a point of law of sufficient importance, like the illegality of the decision sought to be challenged. These factors have been emphasized by the Court of Appeal in a numerous decision. See for instance the cases of *Lyamuya Construction Company Ltd v. Board of Registered Trustee of Young Women's Christian Association of Tanzania*, Civil Application No. 2 of 2010 and *Bushiri Hassan vs Latifa Lukio* Page 3 of 5 Mashayo, Civil Application No. 3 of 2007 (all unreported). In the latter case, the Court of Appeal underscored on the requirement of accounting each day of delay by holding that: "... delay of even a single day, has to be accounted for otherwise there would be no point of having rules prescribing periods within which certain steps have to be taken." In this application the applicants, in their affidavit, claimed their appeal to be struck out before this court for being filed out of time but they failed to attach the said decision. Ms. Natujwa contended that failure for the applicants to attach the said decision made this court not to know from when the applicants were supposed to account for the days of delay though they didn't even account for a single day. It has been decided in the case of *Jacqueline Ntuyabaliwe Mengi vs Abdiel Reginald Mengi & Others* (Civil Application No. 332 of 2021)

[2021] TZCA 583 (12 October 2021) that; .. an affidavit is a sworn evidence and whatever document a party intends to form part of it, has to be stated in the affidavit and attached to it....' It is clear that the document mentioned by applicants in their affidavit should have been attached together to make party of their application. Page 4 of 5 Therefore, apart from failure to account for each day of delay, the applicants have also failed to attach the document they mentioned in their affidavit. In the result, I found this application has no merit and I proceed to struck it out. It is so ordered. M. L. KOMBA JUDGE 20th November, 2024 Page 5 of 5

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