

TANZANIA / JUDGMENT

hassani ramadhani v the republic

2024 tzhc 679 23 february 2024

COURT
TZHCDECIDED
23 February 2024

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA IN THE SUB-REGISTRY OF
MANYARA AT BABATI MISCELLANEOUS CRIMINAL APPLICATION NO. 38002 OF 2023 (Arising
from Criminal Case No 15 of 2022 of Babati District Court) HASSANI
RAMADHANI..... APPLICANT VERSUS THE
REPUBLIC..... RESPONDENT

RULING

13th and 23rd February 2024 MIRINDO, J.: Before Babati District Court, the Applicant, Hassani Ramadhani, was convicted of rape offence and unnatural offence contrary to the provisions of sections 130 (1) and 154 (1), respectively, of the Penal Code[Cap 16 RE 2019] and sentenced accordingly. He has applied for extension of time to appeal to this Court on two grounds. First, on account of being transferred to different prisons, he misplaced court documents. Secondly, there were problems with printing facilities at Babati District Prison where he is currently stationed. These facts were corroborated by the additional affidavit sworn by the Officer In-Charge of Babati District Prison, one Nahaman Waziri Koko. 1 These facts were contested in the counter-affidavit of Mwanaidi Salum Chuma, learned State Attorney who equally represented the Respondent Republic at the hearing of the application. At the hearing of the application, Hassani Ramadhani, left it to the Court to decide the application as presented and had nothing to add. The learned State Attorney, Ms Chuma argued that there was no sufficient reason for the extension of time. The fact that Hassani was transferred to different prisons was of little significance because he was present in court when the judgment of the trial court was delivered on 26th October 2022. Since Hassan was informed of his right to appeal and he was simply negligent in lodging his notice of intention to appeal and the petition of appeal considering that the present application was lodged on 24th November 2023-almost a year. I would like to state for the record that Hassan Ramadhani was not informed of his right to appeal on the date the judgment was delivered. The judgment of the trial court is silent on this important statutory requirement enacted in section 359 (1) of the Criminal Procedure Act [Cap 20 RE 2022]. Speaking of this practice in the context of civil appeals where there is no this statutory requirement, Mnzavas, JA held in *Kijiji cha Ujamaa Manolo v Hotel*, Civil Application 1 of 1990, Court of Appeal of Tanzania at Tanga (1992) that unrepresented litigant who has not been informed of their right to appeal “deserve sympathetic

hearing” in applications for extension of time. 2 The learned State Attorney pointed out that the Court of Appeal has often insisted that delay even of a single day must be accounted for but in the present application that account has not been given. It was the argument of Ms Chuma that there was no proof of loss of documents and even the facts in the additional affidavit of the prison officer were insufficient to justify extension of time. In her last argument, she insisted that the problem of printing facilities has not been sufficiently proved as to when it started and ended. She asked the Court to dismiss the application as unmerited. It has been acknowledged 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) that both prison transfers and problems in printing facilities are issues beyond the prisoners’ control and once proved constitute good cause for extension of time. For these reasons, I am satisfied that there is good cause and I extend time for appealing by ordering Hassan Ramadhani to lodge his notice of intention to appeal within 10 days of the delivery of this ruling and thereafter lodge his petition of appeal within forty five days to the High Court. The officer in charge for Babati District Prison should forward the appeal to the High Court of Tanzania at Babati for further process in accordance to law. Date at Babati this 22nd day of February 2024. 3 F.M. Mirindo JUDGE Court: Ruling delivered in chambers this 23rd February 2024 in the presence of the Applicant and Ms Mwanaidi Chuma, State Attorney. B/C: Lackson Rojas present. F.M. Mirindo JUDGE 23/2/2024 4

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