

TANZANIA / JUDGMENT

ISAYA NDERA RULING

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THE UNITED REPUBLIC OF TANZANIA (JUDICIARY) THE HIGH COURT (MUSOMA SUB
REGISTRY AT MUSOMA) Misc. CRIMINAL APPLICATION No. 27180 OF 2024 (Arising from the
District Court of Serengeti at Serengeti in Economic Case No. 107 of 2022)

1. ISA YA NDERA @ ISUNTE
2. MAGABE NYAISAWA @ INYONGQZ..... APPLICANTS Versus THE
REPUBLIC.....RESPONDENT

RULING

10.03.2025 & 10.03.2025 Mtulya, J.: The applicants in the instant application, Mr. Isaya Ndera @ Isunte and Mr. Magabe Nyaisawa @ Inyongo, were arraigned before the District Court of Serengeti at Serengeti (the district court) in Economic Case No. 17 of 2022 (the case) to reply a charge of wildlife offences. After full hearing of the case, the applicants were found guilty of the offences and were sentenced to serve nineteen (19) years in prison. The applicants were aggrieved by the decision and intended to protest the judgment of the district court in this court, but found themselves out of statutory time for filing a notice of intention to appeal and appeal. The applicant then moved this court under section 361 (2) of the Criminal Procedure Act [Cap. 20 R.E. 2022] i (the Act) praying leave to lodge the intention and appeal out of time. The applicants were summoned today to explain reasons of the delay. According to them, the delay was caused by the prisons authorities by declining support in following up their notice and grounds of appeal. The reason was not protested by Ms. Agma Haule, learned State Attorney arguing that she understands the situations of prisoners in prison authorities. In Ms. Haule's opinion, the applicants may be granted leave to lodge the intended notice and appeal out of time so that they can enjoy the right to be heard at this court. The law regulating enlargement of time to lodge actions in this court is enacted in section 361 (2) of the Act and requires good reasons for leave to be granted. This court and Court of Appeal (the Court) have interpreted the section to empower this court a discretionary mandate in resolving applications for enlargement of time (see: Robert Wambura @ Mungine v. Republic, Misc. Criminal Application No. 44 of 2022 and Samwel Sichone v. Buiebe Hamis, Civil Application No. 8 of 2015). The discretionary mandate of this court depends on the materials presented before it by applicants and each case is determined upon its own peculiar facts (see: NBC Limited & Another v. Bruno Vitus Swalo, Civil 2 Application No. 139 of 2019 and Republic v. Ramadhani Mohamed Chambali, Criminal Sessions Case No. 11 of 2020).

In the instant application, the applicants have produced the allegation of delay to have been caused by the prison authorities in Musoma. The reason was not protested by the respondent's learned State Attorney for want of the right to be heard at this court. I am cognizant that applicants in prisons mandate are given special consideration in resolving applications for enlargement of time to prefer their actions out of time. The Court of Appeal has already shown the course in the precedents of Otieno Obute v. The Republic, Criminal Application No.1 of 2011 and Yusufu Hassan v. Republic, Criminal Application No. 50/12 of 2017. This court has been following the practice without reservations (see: Mtatiro Macha Chacha v. Republic, Criminal Application No. 19730 of 2024; Gasaya Bwana @ Chacha v. Republic, Misc. Criminal Application No. 22 of 2022; and Juma Moroka Masyora v. Republic, Misc. Criminal Application No. 23 of 2022). According to the Court of Appeal: prisoners are not free agents who can freely make follow-ups on their matters and thus granting applications for extension of time is obvious (see: Yusufu Hassan v. Republic (supra). The thinking of the Court of Appeal had received the support from the same Court in the precedent of 3 Otieno Obute v. The Republic (supra), which thought that: as a prisoner, his rights and responsibilities are restricted. Therefore, he did what he could do. He may have been let down by reasons beyond his means. In the mid of last month, February 2025, this court had borrowed the thinking in the decision of Kyange Pius v. The Director of Public Prosecutions, Misc. Criminal Application No. 2455 of 2025, and will follow the same course in the instant application. Having said so and in the end, I am persuaded to believe that the applicants have produced good reason for enlargement of time to file their actions out of time. I therefore grant the applicants ten

- (10) days leave to lodge a notice of intention to appeal and forty- five (45) days to prefer the intended appeal in this court without court in the presence of the applicants, Mr. Isaya Ndera @ Isunte and Mr. Magabe Nyaisawa @ Inyongo, and in the presence of Ms. Agma Haule, learned StateAttorney for the Republic. F. H.MUJyaJ Judge 10.03.2025 4

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Prepared on 13 October 2026 · Esheria