

TANZANIA / JUDGMENT

ECONOMIC APPLICATION

JOHN KIJA DARUSI

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. 000027400 OF 2024 REFERENCE NO.
202409242000027400 (Originating from Economic Case No. 17 of 2020 in the District Court of
Serengeti) BETWEEN JOHN S/O KIJ A @ DARUSI..... 1st APPLICANT JUMA S/
O MABENDO @ MAGOMA..... 2nd APPLICANT VERSUS
REPUBLIC..... RESPONDENT

RULING

20th & 20th November, 2024 M. L. KO MBA, J. Before the District Court of Serengeti, the applicants herein were convicted and sentenced to serve 20 years in prisons 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 relevant provisions of the law. The applicants were not amused by the said decision of the trial Court and determine to challenge it through appeal before this Court but they Page 1 of 5 are out of time. That is the reason the present application is came into existence. This application in respect of extension of time within which to file an appeal out of time by the applicants. 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 deponed by the applicants. The respondent filed counter affidavit to contest the application. During the hearing of this application the applicants appeared solo fended for themselves while on the other hand Ms. Natujwa Bakari, State Attorney represented the respondent. In their submission to support their application, the applicants were of the few words. They prayed their affidavit to be adopted and their application be granted. Responding, the State Attorney submitted that the applicants failed to account each day of delay since the impugned judgment was delivered. She proceeded that, it is almost 4 years elapsed and the applicants were silent. She added that the applicants complained to be delayed by the department of prison in submitting their appeal but they didn't submit affidavit to prove that. The counsel insisted that the applicants failed to Page 2 of 5 account each day of delay and since the long time has passed, what they do now is abuse of court presses. In rejoinder the second applicant submitted that he was already granted extension of time by this court in March 22, 2023 via Misc. Criminal Application No. 53 of 2023 but the time granted melt in vain as the prison officer who

was responsible to help him in lodging his appeal failed to do so. He also complained to be transferred in different prisons. Upon the submission from both parties, the issue I am called to determine is whether the applicants herein have successfully registered good reason(s) sufficient for this court to grant them extension of time as prayed. It is obvious that in order for a person to be successful in application of this nature, he has to provide a good reason to warrant this court to extend time. Section 361 (2) of the Criminal Procedure provide that; The High Court may, for good cause, admit an appeal notwithstanding that the period of limitation prescribed in this section has elapsed. The factors constituting good cause are not firmly explained or listed. They are determined basing on the circumstances of each case. However, in determining the good cause courts have been invariably taking into Page 3 of 5 account various factors including length of delay involved, reasons for delay, the degree of prejudice if any that each party is likely to suffer, the conduct of the parties and the need to balance the interests of a party who has a decision in his favour against the interests of a party who has a constitutionally underpinned right of appeal. See *Jaliya Felix Rutaihwa vs Kalokora Bwasha & Another*, Civil Application No. 392/01 of 2020, CAT at Dar es Salaam, *Paradise Holiday Resort Limited vs Theodore N. Lyimo*, Civil Application No. 435/01 of 2018, CAT at Dar Es Salaam and *Ludger Bernard Nyoni vs National Housing Corporation*, Civil Application No. 372/01/2018, CAT at Dar Es Salaam (Unreported). In the present application, the applicants shoulder all the blame to the management of the prison for failure to help them to submit their appeal in time regardless that they lodged their notice of intention to appeal within time. And that they have been transferred in different prisons since they were sentenced. Since the applicants are prisoners, I am convinced to accept their reason for delay as the cogent one. This is because the applicants are limited in many things that they can solely depend on the empathy of the prison management. Taking into consideration that the Judiciary of Tanzania we now have took a big step in the use of technology in handling cases from Page 4 of 5 filing point, I see the challenges faced by the applicants since they have no any accessibility to the technology and resources. That they depend much on the management of the prison to help them in handling their cases. It is not wise to expect much from a prisoners whose action and movements is limited and solely depend on the compassion of the officer- in-charge of the prison. See *Maneno Muyombe & Another vs Republic*, Criminal Appeal No. 435 of 2016 and *Buchumi Oscar vs Republic*, Criminal Appeal No. 295 'B' of 2011 (both unreported). Therefore, it is my finding that the applicants have successfully assigned a good reason for this court to warrant them extension of time and I proceed to allow their application. The applicants herein are given 30 days from the date of this ruling to file their appeal. And since one of the applicants has already given extension of time before but wasted it in vain, they have to bear in mind that this will be the last chance, so, they should act promptly. It is so ordered. to M. L. KOMBA JUDGE
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CASE PAGE	https://chat.esheria.ai/case-law/tanzania/john-so-kija-darusi-v-republic-extensionoftime-tanzlii-2024

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