

TANZANIA / JUDGMENT

joseph mathias vs republic 2021

tzhc 9548 5 november 2021

COURT
TZHCDECIDED
5 November 2021

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IN THE HIGH COURT OF TANZANIA TABORA DISTRICT REGISTRY AT TABORA MISC. CRIMINAL APPLICATION NO. 25 OF 2020 [Originating from Criminal Case No. 344 of 2016 of the. District Court of Nzega.] JOSEPH MATHIAS APPLICANT VERSUS REPUBLIC RESPONDENT

RULING

Date of Last Order: 03/09/2021 Date of Delivery: 5/11/2021 AMOUR S. KHAMIS, J. This is an application for extension of time to file a notice and petition of appeal out of time. The application was made by way of Chamber Summons under Section 361(2) of the Criminal Procedure Act, Cap 20 R.E 2002 and supported by the applicant's own affidavit. The respondent was served with the Chamber application but it filed is counter affidavit. Hearing was conducted through a video conference involving the applicant who appeared from Uyui Central Prison in Tabora and Mr. John Mkony, learned State Attorney who acted for the Republic. 1 Mr, Mkony who was the first to address the Court, supported the application and contended that the applicant had shown a good reason for failure to present an appeal in time. Joseph Mathias, the applicant herein, adopted contents of the affidavit in support of the application and supported Mr. Mkony's

submissions.

Despite of being undisputed, the issue for determination in this application is Whether the applicant adduced sufficient reasons for the delay? In the affidavit in support of the application, Joseph Mathias stated that upon conviction on 28/11/2016, he lodged a notice of appeal in the trial Court within the required time. He added that due to length of a sentence metted against him, on 20/12/2016, he was relocated from Nzega District Prison to Uyui Central Prison in Tabora for security reasons. He deposed that until lapse of 45 days within which he was to file a petition of appeal, copy of a notice of appeal to be attached to the intended petition of appeal was not supplied to him by the trial Court. Joseph Mathias averred that requisite documents for appeal purpose such as the trial Court's proceedings, judgment and charge sheet were not supplied to him in time despite of a close follow up with the prison officers who coordinated the appeal process. On account of a delay occasioned by late supply of the requisite documents, the applicant prepared an application for an order of extension of time within which to lodge both notice and petition of appeal. The said application registered as Misc. Criminal Application No.

39/2017 was granted by this Court on 13/03/2018. Joseph Mathias further deposed that after grant of Misc. Criminal Application No. 39/2017, he gave a fresh notice of appeal and prepared a petition of appeal, but experienced another hurdle, that there was no response from the office of the Deputy Registrar of the High Court in Tabora. The applicant deposed that when the Deputy Registrar visited Uyui Central Prison on 29/01/2020, he inquired on the fate of his appeal and was informed that his file could not be traced at the Court Registry, hence a fresh application now before this Court. The above stated facts were undisputed and on their own, clearly show that the applicant had the intention to file a notice of appeal and a petition of appeal but such efforts were prevented by reasons that were beyond applicant control. Such reasons for the delay, considered from the reality that the applicant is a prisoner who cannot chase up documents with Court officials without assistance from prison officers, satisfies me that a sufficient cause for extension of time has been shown which warrants grant of the application. In the upshot, Let the applicant lodge a notice of appeal within ten

- (10) working days from date of delivery of this ruling and a petition of appeal within forty five (45) days from the same date. It is so ordered. Dated at Tabora this 5th day of October, 2021.
JSOUK S. KHAMIS JUDGE 3 ORDER: Ruling delivered in Chambers in presence of the applicant in person and Mr. D. Rwegira, State Attorney for the Republic. Right of Appeal 4

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