

TANZANIA / JUDGMENT

Joseph Mohabe Sibora

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26 March 2025

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IN THE HIGH COURT OF TANZANIA MUSOMA SUB - REGISTRY AT MUSOMA MISCELLANEOUS
CRIMINAL APPLICATION REFERENCE NO. 202411252000033296 (Arising from Criminal Appeal
No. 88 of 2022 High Court of Tanzania At Musoma (Extended Jurisdiction) BETWEEN JOSEPH
MOHABE SIBORA..... APPLICANT VERSUS
REPUBLIC.....RESPONDENT

RULING

26th & 26th March, 2025 M. L. KO MBA, J. The present application is brought by way of chamber summons premised under section 11 (1) of Appellate Jurisdiction Act, Cap 141 R. E 2002 in which the applicant Joseph Mohabe @ Sibora is praying before this court the extension of time from which he can lodge notice of appeal out of time in the Court of Appeal of Tanzania. He intends to appeal against the decision of this court (Extended Jurisdiction). The application is supported by affidavit deposed by the applicant himself. On the other hand, the respondent didn't file counter affidavit to contest the application. Page 1 of 5 Briefly, the applicant was convicted and sentenced to serve 20 years in prison by the District Court of Serengeti (the Trial Court) for the offences of unlawful possession of weapons in National Park and unlawful possession of Government Trophies contrary to the relevant provisions of the law. The applicant was not amused by the said decision of the trial court and he appealed to High Court extended jurisdiction where he lost his appeal. Due to circumstances of his sentence, he failed to lodge notice of appeal to Court of Appeal whereby he may appeal at that level. Now, the applicant filed the present application praying this court to extend time so that he can lodge notice of appeal out of time. During the hearing of this application, the applicant was fended for himself whilst on the other hand the respondent was represented by Ms. Beatrice Mgumba, State Attorney. Being a lay person in law, when given the floor applicant prayed his chamber summons and affidavit to be adopted and grant his prayer. Responding, Ms. Mgumba registered her position that she did not object the application as section 361(2) of the Criminal Procedure Act, Cap. 20 (the CPA) empowers this court to extend time when there is good cause. She went on submitting that the applicant did not attach any document Page 2 of 5 to prove that he was transferred to Ukonga prison in Dar es salaam but his affidavit show was deposed at Kisutu Resident Magistrate in Dar es salaam. That proves that applicant was not in Mara Region so it was not easy for him to make follow up of his appeal. She supports the application by the decision of Yusuph Hassan vs Republic, Criminal Application No. 50 of 2017 at page 7 and 8 that prisons are not free agent, their freedom is limited

so they cannot make a follow up of their cases. In this application she was of the opinion that, being in prison, find applicant failed to make a follow up of his appeal and this court may grant application. I congratulate Ms. Mgumba for such brief and reasoned submission. Granting time to applicant is discretion of this court and when a person praying for extension of time, he/she has to registered a good cause(s) sufficient to warrant the court to grant his prayer. See the case of Robert Scheltens vs Balden Norataran Varma & Others (Civil Application No. 112 of 2016) [2018] TZCA 477 (3 May 2018), Rutagatina C. L vs The Advocates Committee & Another (Civil Application 98 of 2010) [2011] TZCA 143 (18 February 2011) and Philimon Mang'ehe t/a Bukine Traders vs Gesbo Hebron Bajuta (Civil Application No. 8 of 2016) [2016] TZCA 577 (20 October 2016). Page 3 of 5 Thus, in present application the issue which I am going to look upon is whether the applicant herein established good cause. In the case of Philimon Mang'ehe t/a Bukine Traders vs Gesbo Hebron Bajuta (supra) the Court of Appeal stated that; Black's Law Dictionary (Ninth Edition) defines good cause as legally sufficient reason. The term good cause is a relative one and is dependent upon the prevailing circumstances of each case. There are no hard and fast rules to what can constitute good cause. In this application the applicant deponed that he lodged his notice of intention to appeal through Musoma Prison authority. He then makes a follow up of the recipient of his notice but he was transferred to Ukonga Central Prison in Dar es salaam and his Notice of Appeal was misplaced as it did not reach the Deputy Registrar of the Court of Appeal. At paragraph 6 deponed that the delay was not caused by his dilatory conduct as it was beyond his control. To my opinion, taking into account that when a person entered in prison his/her freedom is confined and he/she cannot do much for him/herself rather than to depend highly on a compassion of the prison officer(s), I Page 4 of 5 found the reason registered by the applicant is sufficient to move this court warrant the extension of time. Therefore, I see the applicant deserve the extension of time so that he can file his Notice of intention to appeal and latter on to appeal to the court of appeal. I proceed to grant him 30 days from the date of this order to fulfil his desire. Mu M. L. KOMBA JUDGE 26th March, 2025 Page 5 of 5

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