

TANZANIA / JUDGMENT

Masonga vs Republic

COURT
TANZLIIDECIDED
6 March 2025

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA BUKOBA SUB-REGISTRY AT
BUKOB A MISC. CRIMINAL APPLICATION NO.33224 OF 2024 (Originating from Criminal Case No.
66 of 2020 District Court of Biharamuio) MASONG A DAUD @ BULL!
BA..... APPLICANT VERSUS THE
REPUBLIC..... RESPONDENT

RULING

28th February & 6th March, 2025 BANZI, J.: The applicant has filed this application seeking extension of time to file notice of intention to appeal and petition of appeal against the decision of the District Court of Biharamuio which convicted and sentenced him to serve 30 years imprisonment for the offence of unlawful possession of narcotic drugs contrary to section 15A(l) (2)(c) of the Drugs Control and Enforcement Act (Amendment Act) 2017. The respondent opposed the application through the counter affidavit deposed by Mr. Erick Mabagala, learned State Attorney. Page 1 of 7 At the hearing, the applicant appeared in person unrepresented through video link from Kwitanga prison in Kigoma Region whereas, the respondent was represented by Ms. Agnes Awino, learned State Attorney. In his submission, the applicant adopted his affidavit and contended that, he delayed to file notice and appeal because after being sentenced to 30 years, he suffered psychological depression. Thereafter, he was transferred from Biharamulo prison to Kitengule prison. Then he was shifted to Bukoba prison and finally he ended up to Kwitanga prison where he got counselling from prison officers and filed this application. He therefore prayed for this Court to grant the application because his delay was caused by psychological depression and transfer from one prison to another. In her reply, Ms. Awino opposed the application stating that, there is no sufficient cause advanced by the applicant to substantiate the reasons for delay. She further argued that, the judgment of the trial court was delivered in 2020 but since then, the applicant had never lodged his notice of intention to appeal expressing his wishes to appeal. He has failed to account for delay for more than 1,000 days. According to her, being transferred from one prison to another, is not justification for delay. Though extension of time is the discretion of the court but that discretion must be exercised after Page 2 of 7 considering the reasons for the delay such as the delay was out of control of the applicant and length of delay as it was stated in the case of Ausi Mzee Hassan vs Republic (Criminal Application No. 69 of 2022) [2023] TZCA 247 (12 May 2023). She went on stating that, the fact about psychological depression was not proved by the applicant as there is no medical report

to substantiate his assertion which would allow the court to know for how long he was under the alleged depression. She concluded her submission by praying for the application to be dismissed for want of merit. The applicant had nothing to rejoin apart from insisting to be given time so as to file the appeal. Having considered the affidavits and the submissions from both parties, the issue for determination is whether the application has merit. Section 361(l)(a)(b) of the Criminal Procedure Act [Cap.20 R.E. 2022] ("the CPA") requires the appellant convicted by the District Court or a Court of Resident Magistrate to give his intention to appeal within ten days and to lodge his petition of appeal within forty five days from the date of finding, sentence and order. However, in computing the period of appeal, the period the appellant spent before he is supplied with the copy of proceedings, judgment or order shall be excluded. Nevertheless, according to section Page 3 of 7 361(2) of the CPA, where the appellant finds himself out of the time to abide to the above requirements, he is allowed to appeal to lodge the notice and/or petition of appeal upon showing good cause on his delay. The section provides as follows: "The High Court may, for good cause, admit an appeal notwithstanding that the period of limitation prescribed in this section has elapsed." With the above cited provisions of the law, the issue is whether the applicant has advanced good cause to warrant this court to extend time. It is common knowledge that, there are several factors to be considered before granting extension of time. Among them are; the applicant must account all the period of delay and the degree of prejudice that the respondent may suffer if the application is granted. In his affidavit, the applicant contended that, he failed to lodge notice as after being convicted and sentenced before the trial court he suffered psychologically depressed. In his submission before this Court, he further stated that, he was transferred from Biharamulo prison to Kitengule prison. Then he was shifted to Bukoba prison and finally he ended up to Kwitanga prison where, with assistance of the prison officers, he was counselled and decided to appeal but found himself out of time hence this application. Page 4 of 7 Although in his affidavit, the applicant has contended psychological depression being his reason for delay, on her side, Ms. Awino contended that, the applicant has not proved the fact of psychological depression being the cause for him to delay to lodge at least his intention to appeal for more than 1000 days. From the arguments of both parties, it is clear that the applicant has failed to account for each day of the delay. However, as alluded above, this is not the only factor to be considered in granting extension of time. One of the reasons advanced by the applicant is transfer of prisoner from one prison to another which through the case of Shija Marko vs Republic (Criminal Appeal No. 246 of 2018) [2022] TZCA 432 it was considered to be a reason constituting good cause for extension of time. Apart from that, reaffirming its position in the case of Mwita Mataluma Ibaso vs Republic, Criminal Application No. 6 of 2013 (unreported), the Court of Appeal in the case of Renatus Muhanje vs Republic (Criminal Appeal No. 417 of 2016) [2019] TZCA 103 (13 May

2019) stated that: "Following the Court's observation in Laurent Simon Magoso's Case (supra), that good cause for delay should be considered bearing in mind the circumstances of each particular case, it is my view that, in the circumstances of Page 5 of 7 this case, cross-country transfer of the applicant to two not only different Prisons but very far from the trial court made it difficult for the applicant to process appeal Including lodging of notice of

appeal. This reason therefore constitutes good cause for extension of time." Basing on the position of the law above, in the particular circumstances of this case where the applicant has been transferred from one prison to another, it is my considered view that, he has established good cause for the delay. Besides, by granting this application, I don't see any degree of prejudice that the respondent may suffer. Moreover, the law clearly states that, the period the appellant spent before being supplied with the copies of proceedings and judgment should be excluded in computing the time for delay in filing petition of appeal. I perused the copy of the judgment to satisfy myself on when the copies were supplied to the applicant and I noted that, the judgment was certified on 5th July, 2024. In that regard, the period from 24th September, 2020 when the judgment was delivered to 5th July, 2024 when the judgment was certified has to be excluded in computing the time for the delay. Further, it is not on record when those copies were supplied to the applicant who is at Kwitanga Prison far from the trial court which convicted him. Page 6 of 7 That being said, I find the application meritorious and I grant it by giving the applicant 10 days from the date of this ruling to file his notice of intention to appeal before the trial court and 45 days starting to be counted from 17th April, 2025 to file his petition of appeal before this Court. It is so ordered. I. K. BANZI JUDGE 06/03/2025 Delivered this 6th day of March, 2025 in the presence of the applicant through video link, Ms. Gloria Lugeye, learned State Attorney for the respondent, Hon Audax Kaizilege, Judge's Law Assistant and Ms. Mwashabani Bundala, RMA. Right of appeal duly explained. I. K. BANZI JUDGE 06/03/2025 Page 7 of 7

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