

TANZANIA / JUDGMENT

Silo Mazubu Maringiringo

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13 March 2025

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IN THE HIGH COURT OF TANZANIA MUSOMA SUB REGISTRY AT MUSOMA ECONOMIC
APPLICATION NO. 27179 OF 2024 REFERENCE: 202409232000027179 (Originating from Economic
Case No. 6 of 2023 of the District Court of Serengeti at Serengeti) SILO MAZUBU
@MARINGIRINGO..... 1st APPELLANT NYABIGICHO MARO
@MANENO..... 2nd APPELLANT VERSUS THE
REPUBLIC.....RESPONDENT

RULING

13th & 13th March, 2025 M, L. KOMBA, J.: This is an application in which the applicants herein, seeks to file notice and appeal out of time. The application has been preferred under section 361(2) of the Criminal Procedure Act, Cap. 20 R.E 2022 (the CPA). Applicants at the hearing prayed their chamber summons to be adopted together with affidavit in which their reasons for delay are stated in paragraphs 3 and 4; that the delay was caused by prison management i and; during trial they were not afforded right to be heard hence for the interest of justice they should be allowed to file their appeal out of time. The applicants' prayer was not contested by Ms. Beatrice Mgumba and Ms. Joyce Matimbwi, both learned State Attorneys for Republic. Ms. Mgumba submitted that section 361(2) of CPA gives court mandate to allow late application. Although the applicants did not elaborate on their affidavit how prison management caused the delay, but from the fact that the prisoner freedom is restricted they have no objection and prayed for the application to be allowed, referred this court to the case of Otieno Obute vs The Republic (MZA Criminal Application No.1 of 2011) [2013] TZCA 2370 (8 March 2013). Section 361(2) of CPA gives this court discretion on extension of time to prefer appeals out of time, the section states; The High Court may for good cause, admit an appeal notwithstanding that the period of limitation prescribed in this section has elapsed. As it is depicted from the above quoted provision, it is crystal clear, that this court has jurisdiction to extend time upon it being supplied with good cause. There are no hard and fast rules on what amount to good cause it is upon the applicants to convince this court they have 2 demonstrated good cause. See; Kalunga & Company Advocates Ltd vs National Bank of Commerce Ltd (2006) TLR 235, Attorney General vs Tanzania Ports Authority & Another, Civil Application No. 87 of 2016 [2016] TZCA, Samwel Sichone vs Bulebe Hamis, Civil Application No. 8 of 2015 and Oswald Masatu Mwizarubi vs Tanzania Processing Ltd, Civil Application No. 13 of 2010. In the current application, as stated by the learned state attorney, the applicants failed to avail this court on their affidavit how prison management caused the delay. However, I join hands

with the learned minds that, prisoners are not free agents who can freely make follow ups on their cases or take steps on their cases freely and within their time because they are under prison authority, therefore everything they do is depicted and managed by the prison authority. See; Otieno «» (/* * 4 4 ‘ Obute vs The Republic, Criminal Application No.1 of 2011; Joseph Sweet vs The Republic, Criminal Appeal No. 11 of 2017, Fabian Chumila vs The Republic, Criminal Application No. 6/10 of 2019 and Yusufu Hassan vs Republic, Criminal Application No. 50/12 of 2017. In the case of Otieno Obute (supra) the court in extending the time, observed that; 3 ‘.../Is 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... ’ No objection that rights of prisoners are restricted, they could possibly not do what they were ought to do as a matter of their rights due to such restrictions. Therefore, I find that is a good reason, I allow the application. The applicant is granted 30 days from today, to file Notice of Appeal and appeal. It so ordered. DATED at MUSOMA this 13th day of March, 2025. komba Judge 4

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