

TANZANIA / JUDGMENT

teofrid stephano kabelege vs republic

2023 tzhc 280 15 february 2023

COURT
TZHCDECIDED
15 February 2023

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA (SONGEA DISTRICT REGISTRY)
AT SONGEA MISC. CRIMINAL APPLICATION NO. 38 OF 2022 (Originating from Songea District
Court in Economic Case No. 04 of 2019) TEOFRID STEPHANO
KABELEGE.....APPLICANT VERSUS THE
REPUBLIC..... RESPONDENT

RULING

Date of last Order: 06/02/2023 Date of Ruling: 15/02/2023 U. E. Madeha, 3. It is important to note that, the Applicant that is none other than, Teofrid Stephano Kabelege, filed this application by way of chamber summons made under section 361 (2) of the Criminal Procedure Act (Cap. 20, R.E. 2022) and any other enabling provisions of the law, seeking for extension of time to file his appeal out of time against Economic Case No. 04 of 2019 from the District Court of Songea. As a matter of fact, the chamber summons was supported by affidavit sworn by Teofrid Stephano Kabelege, who is the Applicant. The prayers sought in the chamber summons were supported by paragraphs 2, 3, 4 and 5 of the Applicant's affidavit. In his affidavit, he stated that he was accused with the offence of unlawful possession of a government trophy in Economic Case Number 4 of 2019 before the District Court of Songea. He was convicted and sentenced to serve twenty (20) years imprisonment. In that case, he was aggrieved by both conviction and the sentence. To add to it, he contended that on 13th June, 2022, he filed an appeal before this Court but that appeal was struck out since he never lodged the notice of intention to appeal. He added that the errors that were found in that appeal were not maliciously done. Moreover, he further stated that he has an overwhelming chance of success in that appeal. He prayed that, all that has been sought in the chamber summons to be granted for the interest of justice. Lastly, he prayed for the extension of time to lodge the notice of appeal and an appeal. Basically, Mr. Frank Chonja the learned State Attorney representing the Republic did not controvert the application. He admitted the averments of the Applicant in the affidavit in support of the chamber summons and oral submissions made before this Court. As far as I am concerned, I have passed on the reason given by the Applicant for the extension of time. I find that it is a significant reason that he was late in bringing this application because he had previously appealed. However, that appeal was rejected because he filed without lodging the notice of intention to appeal. As a result, it was struck out by

this Court. Apart from that, he has now filed a new application requesting for the extension of time. It is worth considering that, subsequent to the trucking out of the said appeal which has no notice of intention to appeal, the Applicant filed this application seeking for the extension of time to lodge the notice of appeal and definitely appeal out of time. On the other hand, the Respondent's learned State Attorney had no objection to the prayers sought by the Applicant. It is important to note the fact that, this Court is convinced that the Applicant has adduced genuine and sufficient reasons that he filed his appeal on time but unfortunately the appeal was struck out due to lack of the notice of the intention to file an appeal. As a matter of fact, that is why he was out of time and he filed this application for extension of time in order to file the notice of intention to appeal and later on an appeal. Thus, I entirely agree with the Applicant that he was prompt and diligent in dealing with his appeal, which is a sufficient reason for this Court to use its discretion power to grant the extension of time. As a matter of fact, basing on the foregoing I find and hold that the Applicant has explained sufficiently the reasons for his delay in filing the intended appeal. Therefore, this application for extension of time to file the notice of intention to appeal and appeal is granted. The Applicant is to file a notice of intention to appeal and appeal within ten (10) days after being provided with a copy of this ruling. Order accordingly. DATED and DELIVERED at^^^ Uhis 15th day of February, 2023. JUDGE 15/02/2023 4 COURT: This ruling is read over in the presence of the Applicant and Ms. Tumpale Lawrence the State Attorney for the Respondent. Right of appeal is explained to both parties. • 5

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