

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

MISC. CRIMINAL APPLICATION NO. 53 OF 2021

(C/F PC Criminal Appeal No. 20 of 2020, Originated from Karatu District Court,
Criminal Revision No. 3 of 2020, Arising from Karatu Primary Court in Criminal Case
No. 214 of 2020)

ISRAEL JOHN.....1ST APPLICANT

FELISI AWEDA.....2ND APPLICANT

FABIOLA JOSEPH.....3RD APPLICANT

AGNESS WILLIAM.....4TH APPLICANT

KASTULI JOSEPH.....5TH APPLICANT

JOHN ISRAEL.....6TH APPLICANT

VERSUS

DAUDI JOHN.....RESPONDENT

RULING

05.07.2022 & 28.07.2022

N.R. MWASEBA, J.

The applicants herein preferred this application to be granted the following orders; -

1. That the Honourable Court may be pleased to extend time to the Applicants to file an Application to the Court for an order to certify

that a point of law is involved for determination by the Court of Appeal in the decision given on 5th March, 2021.

The application was supported by a joint affidavit sworn by all the applicants and it was challenged by a counter affidavit sworn by the respondent himself.

On 24.05.2022 when the application was called for mention the parties agreed to dispose of the application by way of written submission and court granted their prayer. Both parties were present in person, unrepresented.

Supporting their application, the applicants submitted that they were charged with the offence of brawling C/S 89 (1) of the Penal Code Cap 16 R.E 2019. Prior to the hearing of the case, they preferred an appeal to Karatu District Court where the same was dismissed since there was nothing to be revised as the matter was yet to be heard. Being aggrieved they filed another appeal at this court and the same was dismissed for the same reasons. Aggrieved, the applicants filed a notice to the Court of Appeal to challenge the High Court decision. However, they were not aware that an appeal to the Court of Appeal need a certification that there is a point of law worth to be determined by the CAT. So, they preferred this application for the time to be extended in order to file an application

to certify a point of law. They prayed for the application to be granted since the delay was out of their control.

Responding to what was submitted by the applicants, the respondent instead of arguing in support of the application for extension of time he narrated the whole story and proceedings of the trial court (Karatu Primary Court) as if the matter before the court is for appeal. In the end he argued that the applicants neither stated reasons for their delay nor did account for days of delay. He cited the case of **Lyamuya Construction Company Limited Vs Board of Registered Trustee of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010, CAT at Arusha to support his arguments.

Moreover, the applicant opted not to discuss the reasons advanced in their affidavit supporting the application and decided to deal with trivial matters not relevant to the case at hand.

The respondent added that an appeal to the Court of appeal is not automatic as alleged by the applicants, and that even their notice of appeal was filed out of the prescribed time of 14 days, since the judgment was delivered on 05.03.2022 and the notice to appeal was filed on 01.04.2022. Further to that the applicants failed to elaborate what is *bonafide* mistake which cause them to delay on filing their notice of appeal

within the prescribed time for the court to determine if it is sufficient to extend the time as prayed. Thus, prayed for the application to be dismissed with costs.

I have gone through and considered the submission of both sides. This court will now determine the issue of whether the application has merit.

In **Zahara Kitindi Vs Dominic B. Francis and 9 Others** [2017] TLR 608 the court held that; -

“It is trite law that to grant or refuse extension is entirely in the discretion of the court. It is also trite that such discretion is judicial and so it has to be exercised according to the rules of reason and justice, and not according to private opinion or arbitrarily.”

See also the case of **Bhary engineering & Another Vs Hamoud Ahmed Nassor** [2018] TLR 50 and **Finca (T) Limited & Kipondogoro Auction Mart Vs Boniface Mwalukisa** [2019] TLR 312.

In our present case the sole reasons advanced by the applicants for their delay is the ignorance of court procedures and human mistake which they referred as bonafide mistake as per paragraph 9 and 11 of their affidavit supporting the application.

However, it goes without saying that ignorance of law does not constitute sufficient reason for delay. As it was observed in the case of **Ngao Godwin Losero Vs Julius Mwarabu**, Civil Application No. 10 of 2015 (CAT-Unreported) in which the Court stated that:

"As has been held times out of number, ignorance of law has never featured as a good cause for extension of time (see, for instance, the unreported ARS. Criminal Application No. 4 of 2011 Bariki Israel Vs. The Republic; and MZA, Criminal Application No. 3 of 2011 - Charles Salugi Vs. the Republic). To say the least, a diligent and prudent party who is not properly seized of the applicable procedure will always ask to be appraised of it for otherwise he/she will have nothing to offer as an excuse for sloppiness."

See also the cases of **Charles Machota Salugi Vs Republic**, Criminal Application No. 3 of 2011 and **Wambura N. J. Waryuba Vs The Principal Secretary, Ministry of Finance and Another**, Civil Application No. 320/01 of 2020 (all Unreported).

On the basis of the reasons stated herein, it goes without saying that the applicants have not shown good cause for grant of the sought order. In the end, it is the finding of this court that the application is devoid of merit and is hereby dismissed with no order as to costs.

Ordered accordingly.

DATED at **ARUSHA** this 28th day of July 2022.



N.R. Mwaseba

N.R. MWASEBA

JUDGE

28.07.2022