

IN THE COURT OF APPEAL OF TANZANIA

AT ARUSHA

(CORAM: MWANGESI, J.A., NDIKA, J.A. And KITUSI, J.A.)

CRIMINAL APPEAL NO. 525 OF 2016

JANE FRANCIS SENYAEL MINJA APPELLANT

VERSUS

THE REPUBLIC RESPONDENT

(Appeal from the Ruling and Order of the High Court of Tanzania

at Arusha)

(Moshi, J.)

dated the 19th day of August, 2016

in

Criminal Application No. 31 of 2016

JUDGMENT OF THE COURT

2nd & 8th April, 2019

KITUSI, J.A.:

The appellant, Jane Francis Sanyael Minja, was charged before the Resident Magistrates' Court of Arusha, with four counts under the Immigration Act, No. 7 of 1995, hereafter, the Act, and one count under the Tanzania Passport and Travel Documents Act No 20 of 2002, hereafter to be referred to as Act No 20, in Criminal Case No 11 of 2008.

The charges under the Immigration Act were; **(1)** being unlawfully present in Tanzania, contrary to section 31 (1)(i) and (2); **(2)** Aiding and Hobouring Illegal immigrants to enter and stay in the United Republic of

Tanzania contrary to section 15 (1) read together with section 31 (1) (p) (q) and (2); **(3)** Engaging in employment, occupation, trade, business or profession without a valid residence permit or pass, contrary to section 31 (m) and (2); **(4)** Employing a person who is not a citizen of Tanzania and who has no work permit, contrary to section 31 (n) and (2). The fifth count was under the Passport and Travel Documents Act, that is; **(5)** Unlawfully making a false declaration to obtain a Tanzanian Passport, contrary to section 19 (2) (a) of the Tanzania Passport and Travel Documents Act, No 20 of 2002.

After a full trial, on 2nd April 2009, the trial Resident Magistrates' Court found the appellant guilty on all five counts and proceeded to impose sentences on her.

The appellant was aggrieved, it seems, and belatedly sought to challenge that decision of the trial court. Her quest has proved to be a long journey. First, she lodged an application for extension of time to appeal, vide Misc. Criminal Application No. 20 of 2016. This application was dismissed by Opiyo, J. on the ground that the appellant had not lodged a Notice of Appeal as required by law. Subsequent to this, the appellant filed Misc. Criminal Application No. 31 of 2016 for extension of time to file a Notice of Appeal

out of time. This application was dismissed by Moshi, J. on 19/8/2016 on the ground that the appellant had not shown good cause for the delay.

Aggrieved by the latter decision, the appellant appeals against it on three grounds appearing in the memorandum of Appeal, thus;

- 1. That the Appellate High Court of Tanzania erred in law and in fact when it failed to consider the fact that the appellant was sentenced before being convicted.*
- 2. That the Appellate High Court erred in law when it failed to consider the fact that the trial Arusha Resident Magistrates' Court at Arusha did not evaluate the evidence tendered before it in Criminal Case No. 11 of 2008.*
- 3. That the Appellate High Court of Tanzania at Arusha erred in law and in fact when it failed to put into consideration the fact that the appellant was sentenced on an incomplete judgment.*

At the hearing, the appellant stood in person without legal representation, while the respondent Republic was represented by Ms Sabina Silayo, learned Senior State Attorney who was being assisted by Ms. Naomi Mollel, learned State Attorney. Before the appellant addressed us we had to explain to her that the issue before us is whether the High Court was wrong or not in denying her extension of time, and that she should guard against

challenging the decision of the trial Resident Magistrates' Court because that is for the High Court to decide if time would eventually be extended for her to appeal.

In the course of her brief submission the appellant repeated the grounds of appeal and especially on the first ground, faulted the High Court for failing to hold that the trial court was wrong in sentencing her before entering a conviction against her. This ground, in our view, may be combined with the third ground of appeal in which the appellant complains of being sentenced in an incomplete judgment. As for the second ground of appeal which seeks to fault the trial court for not properly evaluating the evidence before it, we declined to consider it for the obvious reason that it does not form an issue before us.

After hearing the appellant's submissions, we invited Ms Silayo, learned Senior State Attorney, to consider the first ground of appeal and address us on it, focusing on whether or not failure to convict is or is not an aspect of illegality.

The learned Senior State Attorney was candid to concede that the typed copy of judgment of the trial court forming part of the record was incomplete and did not indicate that the appellant was convicted prior to her

being sentenced. She submitted that if upon perusal of the original record it would be confirmed that the appellant was indeed not convicted, then that failure would constitute an illegality.

Having heard the parties, we think we should take off by restating the law on extension of time, which is well settled. First of all, the powers of both the High Court and this court on extension of time are discretionary, and that this Court may only interfere with the decision of the High Court in the exercise of discretionary powers if it was not judicious. Secondly, we are firmly of the view that the issue of illegality in the decision sought to be impugned may be raised at any time.

In determining the application by the appellant for extension of time the High Court (Moshi, J.) took into account the delay from 2009 when the judgment of the trial court was pronounced to 2015, when the application was lodged, a period of six years and concluded that the applicant had not fully accounted for the delay. We are satisfied that the learned judge properly exercised her discretion and we have no reason to fault her. We are fortified by the statement made by the court in **G. A. B Swale V. Tanzania Zambia Railways Authority**, Civil Reference No. 5 of 2011, cited in another decision of this court in **Jehangir Aziz Abdulrasul and 2 Others V. Balози**

Ibrahim Abubakar and Another, Civil Reference No. 8 of 2017, (both unreported);

"I think it is well settled that this court will not interfere with the exercise of its discretion by an inferior court unless it is satisfied that the decision is clearly wrong, because it has misdirected itself or because it has acted on matters on which it should not have acted or because it has failed to take into consideration matters which it should have taken into consideration and in doing so arrived at a wrong decision."

In **Joel Silomba V. Republic**, Criminal Application No. 5 of 2012 at Mbeya (unreported), Rutakangwa, J.A. sitting as a single Judge considered an almost similar length of delay to be too inordinate to warrant the indulgence of the court;

"It is not disputed that the delay of seven years is an inordinate one. It has not been accounted for at all..... in view of this I am constrained to hold that this unreasonable and totally unexplained delay should be attributed to his own dilatory conduct."

The only remaining life jacket for the appellant is the alleged absence of conviction. When we perused the handwritten original record however,

we found the judgment of the trial court not only complete but it does not bear out the appellant. The relevant part reads;

"In the circumstances therefore I find the accused person to be guilty of the offences charged in the five counts and I convict him (sic) accordingly."

In view of the foregoing, that is, the fact that the appellant was clearly convicted, we have found ourselves constrained to conclude that illegality as a ground for extension of time is and was not available to her.

Accordingly, we find this appeal to be devoid of merits and we dismiss it in its entirety.

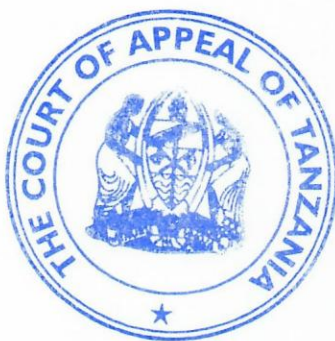
DATED at ARUSHA this 4th day of April, 2019.

S.S. MWANGESI
JUSTICE OF APPEAL

G.A.M. NDIKA
JUSTICE OF APPEAL

I.P. KITUSI
JUSTICE OF APPEAL

I certify that this is a true copy of the original.



E.F. FUSSI
DEPUTY REGISTRAR
COURT OF APPEAL