

IN THE COURT OF APPEAL OF TANZANIA

AT TABORA

(CORAM: MWARIJA, J.A., MWANDAMBO, J.A., And MASHAKA, JA.)

CRIMINAL APPEAL NO. 160 of 2018

HASSAN RAMADHANI APPELLANT

VERSUS

THE REPUBLICRESPONDENT

**(Appeal from the decision of the High Court of Tanzania at Tabora)
(Utamwa,J.)**

dated 30th day of April, 2018

in

Misc. Criminal Application No. 213 of 2017

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JUDGMENT OF THE COURT

22nd March, & 1st April, 2022

MASHAKA, J.A.:

The High Court of Tanzania sitting at Tabora (Utamwa, J), dismissed the appellant's Miscellaneous Criminal Application No. 213 of 2017 for extension of time to appeal against the decision of the District Court of Kigoma at Kigoma in Criminal Case No. 315 of 2016. In that decision, the appellant Hassan Ramadhani was convicted of unnatural offence contrary to section 154(1)(a) of the Penal Code [Cap 16 R.E 2002, now 2019] followed by a sentence of thirty years (30) imprisonment. The appellant was aggrieved by the conviction and

sentence and thus intended to appeal. However, because he delayed to do so, he applied for extension of time to lodge a notice of intention to appeal. The appellant lodged the present appeal after the learned High Court Judge refused to grant the order sought.

Being dissatisfied with the decision of the trial court, and the sentence, he filed a notice of intention to appeal against the decision on the 29/03/2007 and wrote a letter to the District Court Ref. No. 112/KGM.I/XII/133 dated 29/03/2007 requesting to be supplied with copy of judgment for appeal purposes. Before the High Court, the appellant averred that the delay in lodging the notice of intention to appeal was caused by the trial District Court failing to supply him with copies of judgment for appeal vide the said letter. He averred further that since no copy of the impugned judgment was supplied to him by the District Court, he could not lodge his appeal in time. This was the main reason which caused him to delay to file a notice of appeal hence he prayed for leave of the High Court to allow him to lodge the notice of intention to appeal and the appeal out of time.

Even though the learned State Attorney representing the respondent Republic conceded to the application, the learned Judge was

not satisfied that the appellant had adduced sufficient reasons to grant extension of time and accordingly dismissed the application.

Undaunted, the appellant lodged the present appeal faulting the decision of the High Court praying for its reversal and an order extending time to file his appeal to the High Court.

The appellant advanced three grounds of complaint, namely; **one**, the High Court erred for its failure to extend time in the interest of justice, **two**, failure to accord the appellant a fair hearing to appeal by extending time to appeal and **three**, failure to take into consideration that the appellant was a prisoner who had no control in the processing of his appeal.

At the hearing of the appeal, the appellant was present in person, unrepresented. Mr. Miraji Kajiru, learned Senior State Attorney, represented the respondent Republic. When the appellant was invited to amplify his grounds of appeal, he adopted his memorandum of appeal and opted to let the learned Senior State Attorney respond first reserving his right to re-join later, if need arises.

Initially, Mr. Kajiru opposed the appeal and submitted on each ground. Commencing with ground one, he strongly argued that it had

no merit because the appellant had failed to attach the necessary documents to his affidavit as correctly held by the High Court. Moving to ground two, he contended that the appellant was given the right to be heard in which the High Court heard and determined his application finding that the appellant failed to provide sufficient reasons for his delay to enable it extend time to appeal.

With regard to ground three, Mr. Kajiru argued that the appellant had not provided sufficient reasons for his delay. Elaborating, he referred us to para 3 of the affidavit in which the appellant averred that having been aggrieved, he filed a notice of intention to appeal and wrote a letter with Ref. No. 112/KGM.I/XII/133 dated on 29/03/2007 to the District Court requesting for a copy of judgment which he was not supplied but he did not annex a copy of that letter in his affidavit.

On our prompting, Mr. Kajiru conceded on the existence of some irregularities apparent on the face of the record, namely; non-compliance with section 127(2) of the Evidence Act, Cap 6 R.E. 2019 on the reception of the evidence of PW1 and PW2 children who were at the material time of tender age as evident at pages 9 and 11 of the record. Secondly, admission of the PF.3 exhibit P1 without reading its contents and lastly; non-compliance with section 240(3) of the Criminal Procedure

Act [Cap 20 R.E. 2002, now R.E. 2019] (the CPA) for failure to inform the appellant his right to require the medical person who authored exhibit P1 to be summoned for cross examination.

The learned State Attorney submitted that had the High Court directed its mind to these illegalities, it should have found them to constitute good cause to grant extension of time sought. Under the circumstances, he changed his stance. Relying on the case of **Robert Hilima v. The Republic**, Criminal Appeal No. 42 of 2019 (unreported), Mr. Kajiru urged the Court to allow the appeal and grant extension of time to the appellant to file his appeal in the High Court.

On his part, the appellant supported the submissions by Mr. Kajiru and implored the Court to allow his appeal.

We have examined the record, the grounds of appeal advanced by the appellant and Mr. Kajiru's arguments in support of the appeal. Section 361 (2) of the CPA vests discretion to the High Court to grant extension of time to appeal from a District and Resident Magistrate's Court. It states that: -

"S. 361 (2) The High Court may, for good cause, admit an appeal notwithstanding that the period of limitation prescribed in this section has elapsed".

It is plain that the High Court's power to admit an appeal after the lapse of period of limitation is not predicated on any benchmark. It is discretionary based on reasons placed before the High Court by a party who seeks admission of his appeal out of time. The High Court considered the grounds advanced by the appellant in his affidavit but guided by the settled principles on which an application for extension of time can be granted, it did not find good cause in any of them and hence it dismissed the appeal. We have found nothing in any of the grounds advanced by the appellant in this appeal to be sufficient to fault the ruling of the High Court. However, had the learned Judge considered the illegalities which are apparent on the face of the record as pointed out above, his decision would have been different.

We respectfully agree with the position taken by learned Senior State Attorney. This is because we have consistently held that any illegality apparent on the face of the record constitutes good cause to grant extension of time, see **Principal Secretary Ministry of Defence and National Service v. Devram Valambia** [1992] T.L.R. 185 and **Robert Hilima v. The Republic** (supra), amongst others.

In **Principal Secretary Ministry of Defence and National Service v. Devram Valambia** (supra), the Court stated that: -

"In our view, when the point at issue is one alleging illegality of the decision being challenged, the Court has a duty, even if it means extending the time for the purpose to ascertain the point and, if the alleged illegality be established, to take appropriate measures to put the matter and record straight."

As we held in **Robert Hilima v. The Republic** (supra), the exposition of the law in granting extension of time on allegation of illegality is to avail opportunity for an appellate court to correct an illegality manifest on the face of the record.

Like Mr. Kajiru, we are of the settled view that the noted illegalities warrant exercise of discretion in the appellant's favour. Much as the Court would not lightly interfere with the exercise of discretion, we think this matter justifies taking that course of action. This is because we are satisfied that had the High Court directed its mind to the noted irregularities in the light of the settled law in the cases referred to above, it ought to have granted the application and extended the time to lodge a notice of intention to appeal as well as the petition of appeal as prayed in the chamber summons.

On the basis of the above stated reasons, we allow the appeal and quash the decision of the High Court which dismissed the application

and substitute it with an order granting the application. The appellant is ordered to lodge his notice of intention to appeal within ten (10) days of delivery of this judgment and thereafter lodge his petition of appeal within forty-five (45) days from the date of the notice of intention to appeal.

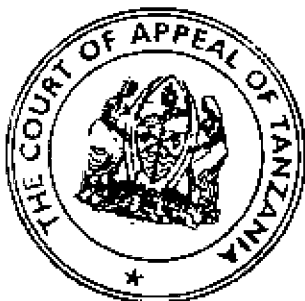
DATED at **TABORA** this 31st day of March, 2022.

A.G. MWARIJA
JUSTICE OF APPEAL

L.J.S. MWANDAMBO
JUSTICE OF APPEAL

L. L. MASHAKA
JUSTICE OF APPEAL

The Judgment delivered this 1st day of April, 2022 in presence of Mr. Miraji Kajiru, learned Senior State Attorney for the Respondent/Republic and in the absence of the appellant who was served however the prison officer indorsed that he was released on 26th March, 2022 after completing his sentence, is hereby certified as a true copy of the original.




F. A. MTARANIA
DEPUTY REGISTRAR
COURT OF APPEAL