

**IN THE HIGH COURT OF TANZANIA**

**AT BUKOBA**

**(PC) CRIMINAL APPLICATION NO. 5 OF 2015**

*(Arising from Muleba District Court Criminal Appeal No. 45 of 2015 and  
Nyamilanda Primary court Criminal Case No. 217 of 2014)*

**ALEX APOLINARY-----APPLICANT**

**VERSUS**

**YUSTO BERNARDO-----RESPONDENT**

**RULING**

**4/9/2018 & 4/9/2018**

**MLACHA, J.**

The applicant, Alex Apolinary, filed an application against the respondent, Yusto Bernardo under **Section 25 (1) of the Magistrate's Courts Act, Cap.11 R.E. 2002** praying the following orders;

*"(a) That this honourable court be pleased to extend time within which to file the appeal to this court against Muleba District Court decision out of time.*

*(b) Costs of this application."*

The application is supported by the affidavit of his advocate Mr. Mathias Rweyemamu. The respondent had a chance to file Counter Affidavit to oppose the application.

Submitting before the court, Mr. Rweyemamu told the court that the magistrate did not explain the right of appeal to the applicant after delivery of the judgment. That the applicant being a layman did not know what to do. He simply returned home to rest hence the delay. Further to that the counsel requested the court to peruse the record of the case and see what he referred to as an illegality in the judgment of the primary court. He told the court that the judgment of the primary court has an illegality. He could point it but went on to say that an illegality is a good cause for extension of time. He cited the case of **Josephina A. Kalalu V. Isaac Michael Malya**, CAT Civil Reference No. 1 of 2010 as his authority. In the alternative, counsel invited the court to exercise its revision power and revise the proceedings and decision of the lower courts on the grounds of illegality.

When the respondent was invited to respond, he told the court that this application should not be allowed because the applicant was present on the date of the decision but returned to sleep; he took no step after the decision of the District Court. He said that if the applicant had a genuine claim he could not return home to rest. He proceeded to say that he is already in possession of the

applicant's land after his failure to pay Tshs. 1,534,000/= which was the subject matter of the case. He had the view that this application should be dismissed.

I have examined the record closely. The decision of the District Court was delivered by C.F. Waane, RM on 6/5/2015. The right of appeal was fully explained. The present application was lodged on 14/9/2015 well over 4 months. Two reasons have been advanced to justify the delay; **One**, that the magistrate did not explain the right of appeal. **Two**, that the applicant is a layman. The first reason is defeated by the records which show that the right of appeal was fully explained. What about the second reasons? Mr. Rweyemamu has tried to bring the concept of ignorance of law and want it to be used as a peg to justify the delay. I think it is a mistaken idea for time and again courts have explained that ignorance of law does not constitute an excuse.

Addressing a similar problem, my brother Kibela J had this to say in **MOHAMED HAMISI MAWA** (THE ADMINISTRATOR OF THE ESTATE OF THE LATE HAMISI HASAN MAWA) V **SELEMANI OMARI KIKWALA**

**AND ANOTHER,** High Court Mtwara, Miscellaneous Land Cause  
Application No.51 of 2013 at Page 3:

*In principle courts have discretion in deciding whether or not to grant extension of time. However, such discretion must be exercised judiciously. Meaning that sufficient reasons must be given before extension of time is granted. The most persuasive reason that the applicant can show is that such delay has not been caused or contributed to by dilatory conduct on his part.(see **SHANTI VS. HINDICHE & OTHERS [1973] E.A.207**)*

So there must be sufficient reasons which are not associated any negligence on the part of the applicant before extending the time. No such reasons has been advanced in this case. What about the illegality in the decision of the primary court? I see no base for considering the issue of illegality of the decision of the lower court because no sufficient grounds have been established to move the court to consider them.

That said, the application is found to be baseless and dismissed.

  
**L.M. Mlacha**

**Judge**

**4/9/2018**



**Court:** Ruling delivered in the presence of the applicant and respondent.

Right of appeal explained.



**L.M. Mlacha,**

**Judge**

**4/9/2018**