**IN THE UNITED REPUBLIC OF TANZANIA**

**BUKOBA DISTRICT REGISTRY**

**AT BUKOBA**

**CRIMINAL APPLICATION No. 2 of 2018**

*(Arising from Criminal Case No. 20 of 2014 of Muleba District Court of Muleba)*

**DIRECTOR OF PUBLIC PROSECUTION ..... APPLICANT**

**VERSUS**

**MEDARD PATRICK & 10 OTHERS .....RESPONDENTS**

**RULING**

*19/07/2018 & 30/08/2018*

**KAIRO, J**

Before me is an Application by Chamber Summons brought under section 379 (1) and (2) of the Criminal Procedure Act [Cap 20 R.E. 2002]. The

chamber summons was accompanied by an affidavit sworn by Emmanuel Kahigi, learned State Attorney. The orders being sought herein are:-

1. *That this honorable Court may be pleased to grant leave to file notice of appeal out of time.*
2. *That this honorable Court may be pleased to grant leave to file Petition of appeal out of time.*
3. *Any other orders this honorable Court may deem fit and just to grant.*

The application is being resisted by way of counter affidavit filed by the respondents.

The applicant in his affidavit averred as followings:-

3. That, the matter was instituted at Muleba district court as criminal case no. 20 of 2014.
4. That, the matter was decided in favor of the respondents.
5. That the Prosecution case was conducted by the Public Prosecutor stationed at Muleba Police station.
6. That, despite the very clear errors made by the trial Court in deciding the case in favor of the Respondents, the Public Prosecutor neither lodged a notice of intention to appeal nor informed the Principal State Attorney In-Charge of Bukoba office about the decision so as to issue notice of Appeal in accordance with the law.

7. That Pw1 being a layman decided to make a follow up in the trial Court and managed to obtained a certified copy of the judgment on 26th January, 2016 a copy of judgment is marked and attached as annexture R-1.
8. That Pw1 brought the said certified copy of judgment to our office on 2nd February 2016.
9. That is the time he become aware of the case judgment of the court.
10. That I realized that time stipulated by law in lodging a notice of intention of appeal is over.
11. That in such situation I had no option than filing this application to be allowed to lodge notice of intention to appeal out of time.

At the hearing of this application, the Applicant was represented by Mr. Kahigi, the learned State Attorney while the Respondents were self represented.

It was submitted by the learned State Attorney that the matter has originated from the District Court of Muleba as Criminal Case No. 20/2014 whereby the decision was delivered on 03/08/2015 in favor of the respondents. It was further argued that the matter was prosecuted by the Public Prosecutor stationed at Muleba Police post who did not report the outcome of the case to the DPP nor lodged a notice of an intention to appeal. He submitted further that the complainant himself through his own

initiatives obtained a copy of judgment on 26/01/2016 and on 02/02/2016 he submitted it to the Attorney General's office at Bukoba; that is when the DPP becomes aware of it. Since there was no notice of intention to appeal so far filed and the time limit has elapsed, they preferred this application albeit out of time. He argued further that they have gone through the proceedings of the trial court and discovered that there is a point of law to be considered and that the appeal has overwhelming chances of success. He maintained that they have filed their application under section 379 (1) and (2) of Criminal Procedure Act, [Cap 20 R.E. 2002] as there are good causes for the intended appeal to be admitted out of time. He prays the court to grant the applications sought in the chamber summons.

Responding to these submissions, the 1st respondent submitted that the proceedings at Muleba took six months until its judgment. He went on that after that they were discharged and continued with agricultural activities in the village. The complainant neither complained nor appealed after the judgment until now. In this situation, he prayed the application be dismissed.

He also submitted that the complainant; Brayson Damian once filed the application to appeal out of time which was struck out. He then came again to file this current application. They thus they prayed the same be dismissed as well. The 5th respondent supported the argument by the 1st respondent and prayed the court to dismiss this application as well.

In rejoinder, Mr. Kahigi conceded that the Criminal Application No. 07/2016 once filed was not determined on merit following the P.O raised on verification clause and was struck out with leave to re-file on 27/11/2017. He submitted that to be the reason why they have lodged the present application. He reiterated his prayer from the court to grant the leave sought.

It is a cardinal principle of the law that an application for extension of time is entirely in the discretion of the court to grant or refuse. However to enable the court exercise its discretion judiciously, various decisions of the court have given guidance on the criteria to grant an extension of time; that is where it has been established by the Applicant that the delay was with sufficient cause [Refer the case of **Benedict Mumello versus Bank of Tanzania, Civil Appeal No. 12 of 2002, at page 6. CAT at Dar Es Salaam, (Unreported)]**. The issue for determination therefore is whether the Applicant in this matter has adduced sufficient cause for the delay.

It is imperative to understand that the word sufficient cause has not been defined. In the case of **Tanga Cement Company Limited v. Jumanne D. Masangwa and Amos A. Mwalwanda- Civil Application No. 6 of 2001** (unreported) the court has observed as follows:-

> *"What amounts to sufficient cause has not been defined. From the decided cases a number of factors has to be taken into account, including whether or not the application has been brought promptly;*

*the absence of any or valid explanation for the delay; lack of diligence on the part of the applicant".*

With that guidance in mind, this court now reverts into analyzing the reasons leading to the delay. I will narrate what transpired so as to appreciate my conclusion to be given shortly.

The law provides that the appeal is to be initiated by the DPP through a notice to be filed within 30 days from the Judgment date. It is on record that this is a second application. At first, the DPP's Office filed an application for an extension of time to lodge the notice and the intended appeal on 13/6/2016 after being availed with the copy of the Judgment to be impugned on 2/2/2016 that is about 132 days later. However the filed application was struck out for want competency on 27/11/2017. In the said application, the Respondent together with their reply raised P.Os to the effect that the application was incompetent for being supported by a defective affidavit.

The record reveals that on 17/7/2017 both counsels appeared in court and by that time a notice of the P.O was already availed to the State Attorney handling the matter on behalf of the DPP who prayed for a hearing date. Despite knowing that the affidavit was defective he didn't pray to withdraw the same. The State Attorney conceded on the defectiveness of the application later on 27/11/2017 and the same was struck out as a result.

The record further reveals that after the struck out, the Applicant refilled the application on 4/1/2018. I understand that a party may re- institute the application after being struck out and after correcting the mistake pointed out as the DPP did, but the wanting question is whether the same was instituted within a reasonable time. As earlier stated, the application was re-instituted on 4/1/2018 that is 37 days from the struck out date. It is imperative to note that the DPP is an office with several officials. Besides, this is a second application after the struck out of the previous which was defective. As such I fail to understand why it took more than a month to re-institute the application. Even on their part the Learned State Attorney didn't state the reason of waiting 37 days to re-file the application.

I am aware that there is no time limit explained for one to re-file the application after struck out, but it is expected to be sooner than latter and more so in the circumstance of this case where by the State Attorney conceded himself to the defect which means he knew what to correct even before he came to court to concede. As such I consider the *drag of feet* for all those 37 days before re-filing the application with no explanation to be not prompt and unreasonable. With due respect, it depicts lack of diligence on the part of the applicant.

I am convinced that the *dragging of feet* to re-file was not an unfortunate incidence but a trend having in mind what transpired when this application was first brought to court it took 132 days after the DPP's office got the Judgment to be impugned.

To say the least, that is an abuse of the court process which this court is not prepared to allow.

The Applicant has also deposed that there is a legal point which needs to be rectified by this court and that there are overwhelming chances of success in the intended petition of appeal, but with much respect to the Applicant, I don't subscribe to his contention. Suffice to state that I can't guarantee the success of the intended appeal as the same would depend on the arguments to be fronted by both parties, as such to so state at this juncture is merely speculative and the court doesn't work on speculation but actuality.

With regards to a legal point alleged to need this court's intervention, suffice also to state that the court cannot condone negligence in the pretext or disguise of a legal point which needs the court's rectification, otherwise it will defeat the justice the courts have been entrusted to preserve. Besides, litigation must come to an end as a matter of policy. One cannot come to court at his or her own pace ad expect the court to entertain him or her. The 1st Respondent on behalf of his fellow Respondents told this court that after the completion of the case in 2015, they went back to their village to continue with agricultural activities. As such being dragged to court now and then and when the other party feels like in my view has an adverse results of suffocating their efforts to develop themselves economically.

All in all the court has reached a finding that the Applicant has failed to give sufficient cause for delay to warrant the court grant the prayers sought in the chamber application.

Accordingly the application is dismissed.

It is so ordered.

L.G. Kairo

**Judge**

At Bukoba

30/08/2018