

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
MOSHI DISTRICT REGISTRY
AT MOSHI**

MISC. CRIMINAL APPLICATION NO. 12 OF 2019

(C/f Criminal Appeal No. 32 of 2018, District Court of Moshi at Moshi Original Shauri
la Jinai No. 626/2018)

AMANDUS LYIMO APPLICANT

VERSUS

KUDRA IDD MUSHI RESPONDENT

6th July, 2020 & 10th August, 2020

RULING

MKAPA, J:

The applicant Amandus Lyimo is seeking for extension of time to lodge appeal to this court out of time against the decision of the District Court of Moshi at Moshi (1st Appellate Court) in Criminal Appeal No. 32 of 2018 delivered on 16/05/2019. The application is made under **section 25 (1) (b) of the Magistrates Court Act**, Cap 11, [R.E. 2002] (MCA) and is supported by applicant's sworn affidavit. The respondent disputed the application and filed a counter affidavit to that effect.

Application was agreed to be disposed of by way of filing written submissions. The applicant was represented by Ms. Greta Y. Msuya learned advocate while the respondent was represented by Mr. Musa K. Mziray also learned advocate.



Supporting the application, Ms. Msuya submitted that after the applicant was supplied with copies of judgment and proceeding on 16th May 2019, he was not certain whether the case was civil or criminal matter according to the 1st appellate court order, thus had to seek for legal advice in order to be guided accordingly. Therefore had to look for funds and managed to engage a lawyer on 21st June, 2019 who later on filed this application on 28th June, 2019 resulted into a delay of 14 days.

Ms. Msuya submitted further that, the delay was not caused by negligence as the applicant was seeking legal assistance which is essential in the administration of justice. It was Ms Msuya's contention that the decision which is subject to appeal has a great chance of success due to prominent errors. To support her argument, she cited the cases of **R. V Yona Kaponda and 9 Others** (1985) TLR 84, **Mobrama Gold Corporation V Minister of Energy and Minerals and 2 Others** (1998) TLR 425 and **Article 107A (2) (e) of the Constitution of the United Republic of Tanzania** (Cap 2) which support the contention that the applicant be granted extension of time.

She finally prayed for this application to be granted for interest of justice to enable the applicant pursue his rights. Contesting the application, Mr. Mziray argued that, the 43 days delay since the Judgment was delivered by the 1st appellate court was not accounted for by the applicant. That, the delay was inordinate

and the application ought to be dismissed for lack of merit as was held in the case of **Moto Matiko Mabanga V Ophir Energy PLC and Two Others**, Civil Application No. 463/01 of 2017 (unreported) and **Bushiri Hassan V Latifa Lukio Mashayo**, Civil Application No. 03 of 2017 to the effect that:-

"...Delay of even a single day, has to be accounted for, otherwise there would be no point of having rules prescribing period within which certain steps have to be taken."

Mr. Mziray also cited the case of **Lyamuya Construction Co. Ltd V. Registered Trustees Of YWCA of Tanzania**, Civil Application No. 2 of 2010, CAT (unreported) which illustrated the fact that in an application for extension of time, the applicant must account for period of delay which should be ordinate, must show diligence and sufficient reason such as illegality of the decision to be challenged. Mr. Mziray explained further that, the applicant has failed to account for each day of delay hence he slept over his rights therefore, the application deserves dismissal. It was Mr Mziray's view that the applicant's reason for delay to the effect that was seeking legal assistance coupled with financial constraints in timely engaging an advocate is not a sufficient reason for delay because ignorance of law is not a sufficient cause. Mr. Mziray cited the case of **Abdallah Salanga and 63 Others V Tanzania Harbours Authority**, Civil

Application No. 4 of 2001 (unreported) and **Acacia Pharmacy Ltd V The Hon. Attorney General and Regional Administrative Secretary**, Shinyanga Commercial Case No. 95 of 2010 to support his argument. He finally prayed for the application to be dismissed with costs as the delay was occasion by negligence.

Re-joining briefly, Ms. Msuya reiterated his stance to the effect that the applicant had established sufficient cause warranting this court to grant the application sought.

Having considered both parties' submissions and arguments the main issue for determination is;

Whether sufficient cause has been adduced to warrant exercise of discretion of this court to grant extension of time

It is a trite principle of law as enunciated in numerous court decisions the fact that, an application for extension of time is entirely upon the discretion of the court to grant or not and the same must be confined to the rules of reason and justice. The case of **Lyamuya Construction** (supra) sets principles in determining good cause for granting extension of time *inter alia*, the applicant must account for all the period of the delay; the delay should not be inordinate; the applicant must show diligence and not apathy, negligence or sloppiness in the prosecution of the action that intends to take. The same position

was observed in numerous Court of Appeal's decisions including the case of **Eliakim Swai & Another V Thobias Karawa Shoo**, Civil application No. 2 of 2016 (CAT) at Arusha (unreported).

It is clear from applicant's submission that the main cause for the delay was the fact that he was seeking legal assistance while he was financially constraint thus unable to appeal on time. As legal assistance is sought purposely to seek the legal representation in order for an expert in law to address legal issues in dispute, justice demands that the application be granted in order for the applicant to exercise his Constitutional rights and protect his rights. In the event, I am satisfied that the applicant has demonstrated good cause for the delay. Accordingly I proceed to grant the application. The applicant is ordered to file his appeal within 14 days from today with no order to costs.

It is so ordered.

Dated and delivered at Moshi this 10th day of August, 2020.




S. B. MKAPA

JUDGE

10/08/2020