

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

MISCELLANEOUS CRIMINAL APPLICATION NO. 17 OF 2020

*(Originating from decision of the District Court of Serengeti at Mugumu ON
Criminal Case No 152/2018)*

RYOBA MSOGORE @ MARWAAPPELLANT

Versus

THE REPUBLIC RESPONDENT

RULING

8th & 15th May, 2020

Kahyoza, J.

The applicant, **Ryoba Msogore @ Marwa** prays to this Court to extend time to appeal. He instituted his application by chamber summons supported by his affidavit under section 361(2) of the **Criminal Procedural Act**, Cap 20 R.E. 2019.

The applicant's ground of application is that he delayed to appeal while prosecuting his appeal which was filed on time but struck out for being incompetent.

Brief account is that: The applicant was arraigned in Criminal Case No 152/2018 before Serengeti District Court with three counts, first count unlawful entry into National Park c/s 21(1) (a) and (2) and 29(1), second count unlawful possession of weapons c/s 24(1) (b) and

(2) and third count unlawful possession of Government trophies c/s 86(1) and (2) (c) (iii) of the wildlife conservation. He was convicted and sentenced to serve **twenty years** imprisonment.

Aggrieved, the applicant timely appealed to this Court. The applicant's appeal was struck out on the ground that it was lodged by unqualified person contrary to section 362(1) of the **CPA**. Hence, he lodged this application seeking for leave to appeal out of time.

The respondent filed no counter affidavit to oppose the application. He opted to oppose it orally by submission. Mr. Byamungu, learned State Attorney for the respondent submitted that the application was meritless. He contended that the applicant had not adduced good reasons for extension of time. To him, the applicant was to blame for lodging a defective appeal. He submitted that the applicant was negligent or he lacked diligence. He concluded that negligence or lack of diligence was not a good ground for extending time under section **361(2) of the CPA**. He referred to the **Metro Products Ltd v. Minister of Lands** [1989] **T.L.R.** 5, where the Court of Appeal held **that good grounds for extension of time do not include ignorance of the procedure or lack of diligence**. He concluded that the application before this Court was due the applicant's ignorance or lack of diligence. He prayed the same to be dismissed.

In his brief rejoinder, the applicant prayed his application be allowed, on the ground that the appeal was filed on his behalf by the prison's officers.

Has the applicant adduced good or sufficient cause for his delay?

In deed the law requires a person applying for extension of time to exhibit good cause for delay. See section 361(2) of the **CPA**, which provides as follows: -

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

There are also a number of authorities to the extent that an application for extension of time may be granted upon the applicant showing good cause. One of such authorities are **Mumello v. Bank of Tanzania** [2006] E.A. 227 where it was observed that-

"It is trite law that an application for extension of time is entirely in the discretion of court to grant or refuse and that extension of time may only be granted where it has been sufficiently established that the delay was due to sufficient cause."

I also agree with the respondent that ignorance of the law or lack of diligence is not a good ground for extension of time. Refer to the case of **Metro Products Ltd** (supra) and **Lyamuya Construction Company Ltd Vs Board of Registered Trustee of Young Women Christian Association of Tanzania Civil Application No 2 of 2010** (Unreported), the Court of Appeal provided the following guidelines for the grant of extension of time-

- a). The applicant must account for all the period of delay.*
- b). The delay should not be inordinate*

c). The applicant must show diligence and not apathy negligence or sloppiness in the prosecution of the action that he intended to take.

d) If the court feels that there are sufficient reasons/such as the existence of a point law of sufficient importance such as the illegality of the decisions ought to be challenged.

The applicant's ground for extension of time is that he delayed to appeal prosecuting an incompetent appeal. There is no dispute that the applicant filed his appeal on time and that the said appeal was struck out as it was lodged by an authorized person.


I must say at the outset that this ground is a sufficient reason to warrant the application to be granted. It amounts to a technical delay which the applicant was not to blame. Courts have held in cases without number that a technical delay **is explicable and excusable**. There is a plethora of authorities such as **Fortunatus Masha v. William Shija and Another** [1997] TLR 154, **Salvand K. A. Rwegasira v. China Henan International Group. Co. Ltd** Civil Reference No. 18 of 2006, **Zahara Kitindi & Another v, Luma Swalehe & 9 Others**, Civil Application No. 4/05 of 2017, **Yara Tanzania Limited v. DB Shapriya and Co. Limited**, Civil Application No. 498/16 of 2016 and **Vodacom Foundation (supra) and Samwel Kobelo Muhulo v. National Housing Corporation**, Civil Application No. 302/17 of 2017. In **William Shija and another v. Fortunatus Masha** (supra) the Court of Appeal stated the following -

"A distinction had to be drawn between cases involving real

or actual delays and those such as the present one which clearly only involved technical delays in the sense that the original appeal was lodged in time but had been found to be incompetent for one or another reason and a fresh appeal had to be instituted. In the present case, the applicant had acted immediately after the pronouncement of the ruling of the Court striking out the first appeal. In these circumstances an extension of time ought to be granted."

In the upshot, I find the applicant has adduced good ground to warrant this Court to extend time. Thus, the application is granted. The applicant is given 30 days' leave, from the date of this ruling, to institute the intended appeal.

It is ordered accordingly.



J. R. Kahyoza
JUDGE
15/5/2020

Court: Ruling delivered in the absence of the parties with leave of absence due to **COVID-19** outbreak. **Copies of the Ruling to be dispatched to them.** B/C Ms. Catherine present.



J. R. Kahyoza
JUDGE
15/5/2020