

**IN THE HIGH COURT OF TANZANIA**

**(IN THE DISTRICT REGISTRY)**

**AT MWANZA**

**MISC. CRIMINAL APPLICATION No. 10 OF 2020**

*(Arising from Magu District Court in Criminal Appeal No. 23/2018 Original  
Nyanguge Primary Court in Criminal Case No.72 of 2018)*

**ESTER D/O MATHIAS ..... APPLICANT**

**VERSUS**

**JUMA S/O JAMES ..... RESPONDENT**

**RULING**

*Last Order: 15.05.2020*

*Date of Judgment: 20.05.2020*

**A.Z. MGEYEKWA, J**

The applicant has instituted an application which is brought under Section 25 (1) (a) of the Magistrate Court Act, Cap.11 [R.E 2019]. The order sought is for extension of time to file an appeal out of time to appeal to this court. The application is supported by affidavit deposed by Esther D/O Mathias, the applicant. The respondent filed a counter affidavit deposed by Juma James, the respondent.

The hearing was done by way of written submission whereas, the applicant filed the written submission as early as 4<sup>th</sup> May, 2020 and the respondent filed a reply as early as 11<sup>th</sup> May 2020 and a rejoinder was filed on 12<sup>th</sup> May, 2020.

Supporting the application, the applicant prays for this court to adopt the affidavit and form part of her submission. She submitted that she lodged a Petition of Appeal at the High Court and filed a Notice of Appeal on 6<sup>th</sup> August, 2019. The applicant went on to state that the 1<sup>st</sup> appellate court delivered its judgment on 5<sup>th</sup> August, 2019, thereafter she requested for copies of judgment in respect to Criminal Appeal No. 23 of 2018 without success. She further submitted that after obtaining the copies of judgment she filed a PC Criminal Application No. 01 of 2020 which was withdrawn with leave to refile hence she filed the instant application.

In conclusion, the applicant prays this court to grant her application for extension of time to file a petition of appeal.

Rebutting the submission, the respondent submitted that the applicant has not moved this court to grant the applicant's application for extension of time to file an appeal before this court. He went on to state that it is trite law that the application for extension of time is entirely the discretion

of the court whether to grant or not, but the discretion must be exercised judiciously. He added that the extension of time is granted where a sufficient reason is shown. To buttress his submission, he referred this court to the case of **Mumello v Bank of Tanzania** (2006) 1 E.A 227.

The respondent further submitted that he has perused the applicant's affidavit and noted that the applicant has not stated good reasons for her delay thus she had not met the guiding principles which need to be considered when dealing with an application for extension of time. The respondent listed the principles as follows; the applicant must account for all days of the delay, the delay should not be inordinate, the applicant must show diligence and not apathy negligence, and other reasons such as the existence of a point of law sufficient importance. The respondent fortified his submission by referring this court to the case of **Ngao Godwin Losero v Julius Mwarabu**, Civil Application No. 10 of 2015 and **National Food Reserve Agency v Elig Mtei**, Civil Application No. 17 of 2017 HC, at Tabora (all unreported).

The respondent went on to submit that the applicant's ground that she was waiting to be supplied with copies of judgment is baseless because in matter originating from the Primary Court attaching a copy of judgment

along with a Petition of Appeal is not a legal requirement. To support his submission he referred this court to section 25 (1) (a) of the Magistrate Courts Act, Cap.11 [R.E 2019]. He also cited section 25 (3) of the Magistrate Courts Act, which provides that:-

*" Every appeal to the High Court shall be by way of petition and shall be filed in the District Court from the decision or order in respect of which the appeal is brought."*

The respondent continued to submit that the ground that the applicant is a layperson is baseless because ignorance of law has never been a good cause for extension of time. The respondent fortified his submission by referring this court to the case of **Ngao Godwin Losero v Julius Mwarabu** (supra), the court held that:-

*" As has been held times out of number, ignorance of law never features as a good cause for extension of time."*

In conclusion, he prays this court to dismiss the applicant's application with costs.

On his short rejoinder, the Applicant reiterated her submission in chief and concluded by stating that she managed to file the Notice of

Appeal on time. She went on to state that section 25 (1) (a) and (b) empowers this court to exercise its discretionary power without requiring the applicant to adduce sufficient reasons. She prays this court to grant her application.

I have given careful consideration to the arguments for and against the application herein advanced by the Applicant and the Respondent. The central issue for consideration and determination is *whether sufficient reasons have been advanced by the applicant to warrant the extension of time to file an appeal before this court*. It should be noted that granting an extension of time is a matter for the discretion of the Court. However, that discretion is judicial and so it must be exercised according to the rules of reason and justice. In the case of **Mboga v Shah** [1968] EA the defunct Court of Appeal for Eastern Africa held that:-

*" All relevant factors must be taken into account in deciding how to exercise the discretion to extend time. These factors include the length of the delay, the reason for the delay, whether there is an arguable case on appeal, and the degree of prejudice to the defendant if time is extended."*

When all is said concerning the guiding principles, I right away reject the explanation of ignorance of the legal procedure given by the applicant

to account for the delay. As has been held times out of number, ignorance of law has never featured as a good cause for extension of time. See the case of **Ngao Godwin Losero** (supra) the Court of Appeal cited with approval the case of **Bariki Israel v The Republic** Criminal Application No.4 of 2011 [ 18<sup>th</sup> October, 2016 TANZLII]. To say the least, a diligent and prudent party who is not properly seized of the applicable procedure will always ask as an excuse for sloppiness.

Applying the foregoing authorities and the principle of the case at hand, I am not persuaded to grant the applicant's application because the applicant has not demonstrated any good cause that would entitle her extension of time. In the result, this application fails and is accordingly dismissed without costs.

Order accordingly.

Dated at Mwanza this date 20<sup>th</sup> May, 2020.

  
A.Z.MGEYEKWA

**JUDGE**

20.05.2020

Ruling delivered on 20<sup>th</sup> May, 2020 via audio teleconference, and both parties were remotely present.

  
A.Z.MGEYEKWA

**JUDGE**

20.05.2020

