

**IN THE HIGH COURT OF TANZANIA  
IN THE DISTRICT REGISTRY  
AT MWANZA**

**MISC. CRIMINAL APPLICATION NO. 98 OF 2019**

*(Arising from Criminal Appeal No. 13/2019 of Magu District Court, originating from  
Criminal Case No. 384/2018 of Nyanguge Primary Court of Magu District)*

**MICHAEL KISAMYA..... APPLICANT**

**VERSUS**

**TENDELWA MWEBEYA..... RESPONDENT**

**RULING**

*17<sup>th</sup> March & 06<sup>th</sup> May, 2020*

**TIGANGA, J.**

Before Nyanguge Primary Court of Magu District, the applicant stood charged with an offence of assault causing actual bodily harm contrary to section 241 of the Penal Code (Cap 16 RE 2002). He was so charged against the complaint lodged by the respondent Tendelwa Ng'webeya. After full hearing of the case, the applicant was found not guilty and acquitted.

The respondent was aggrieved by the decision of the Primary Court, he preferred an appeal to the District Court of Magu where the appeal was allowed. Following the findings of the appellate court, the applicant was found guilty and convicted as charged before the trial Primary Court. After that conviction, he was sentenced to three month conditional discharge and

was required to keep peace within that period of sentence. The judgment of the appellate District Court was delivered on 05/08/2019 in the presence of both parties. However the copy of the judgment was not ready for collection on that date, the record shows that, it was certified and was ready for collection on 12/09/2019.

Seemingly the applicant was not satisfied, he decided to appeal to this court, but realising that he was already late to do so, he filed this application for extension of time under section 25 (1) (b) of the Magistrates' Courts Act [Cap 11 RE 2002] and any other enabling provision of the law.

In the chamber summons, the court is asked to extend time within which to file an appeal out of time. It is also asked to allow the appeal and to give any other relief as the court may deem just to grant. The chamber summons was supported by an affidavit sworn by the applicant, and was also in the company of the copy of the petition of appeal. I believe the copy of the petition of appeal intended to inform the court the gist of the intended appeal, it did not intend to file an appeal together with the current application that is why the application at hand was registered as Misc. Criminal Application and not a PC Criminal Appeal. This means that, the second prayer of allowing the appeal was misplaced, therefore it will not be dealt with at this stage.

The affidavit in support of the application has set forth the grounds of application and the reasons for his delay to file an appeal. He deposed that the judgement of the District Court was delivered on 05/08/2019, and on that date he filed a letter applying for copy of judgement, but was not

supplied the same within 30 days. He was supplied the same on 16/09/2019, which was beyond 30 days.

After being so supplied with the copy, he started the process of engaging an advocate but he failed to pay the advocate to draft the application and petition of appeal within time. According to him, the delay was not occasioned by the negligence of the applicant, but by the delay of the District Court to supplying the copy of judgement. It was after he has managed to pay the advocate to draft the documents for him, when he managed to file this application.

The application was countered by the respondent, by filing the counter affidavit with a total of four paragraphs. However, looking at the Counter Affidavit, I find paragraph 3 and 4 of the same, to be argumentative, thus infringing Order XIX Rule 3 of the Civil Procedure Code [Cap 33 R.E 2019] which provides that the affidavit shall be confined to facts which the deponent can prove, it should not include the matter of hearsay or argumentative matters.

These paragraphs of the Counter Affidavit contain arguments for instance in paragraph 3, the Respondent depose as follows;

*"..... section 21 (1) (b) of the Magistrates' Courts Act Cap 11 RE 2002 provides that, in any other proceedings, any party if aggrieved by the decision or order of the District Court in the exercise of its appellate or revisional jurisdiction may within thirty days after the date of the decision or order appeal there from to the High Court, **but the appellant established now issue of***

***supplied a copy of Judgement of which are not provided.  
However no strong grounds stated to convince this court  
to grant such application”***

That is the position even in paragraph 4 as well

Further to that, the said counter affidavit has no jurat of attestation and verification thereby infringing the provision of section 8 of the Notaries Public and Commissioner for Oath Act [Cap 12 R.E.2019], which requires the affidavit to be verified and to have jurat of attestation. That makes the whole counter affidavit to lack important salient features. That said the whole counter affidavit is found to be incurably defective, and is hereby expunged from the record leaving the application uncontested.

Now having so ruled, let me go back to the merit of the application. Section 25 (1) (b) of the Magistrate Court Act, [Cap 11 now R.E 2019] empowers this court upon application to extend time within which to appeal. The law has not provided the ground upon which to base in granting extension of time.

However, the general rule is that whoever asks for extension of time to appeal against any decision of the lower court must show good or sufficient cause for his delay to file the said appeal. This is according to a number of decisions of the Court of Appeal the most recent are being **Omary Makunja Vs Republic**, Criminal Application No. 88 of 2018 CAT - DSM (unreported).

In giving good or sufficient cause for delay, the applicant needs to account for every single day he delayed. See **Hassan Bushiri vs. Latifa Lukio Mashayo**, Civil Application No. 3 of 2007, **Lyamuya Construction company Limited Vs. Board of Trustees of young Women's Christian Association of Tanzania**, Civil Application No. 2/2010 as well as **Bariki Israel Vs Republic**, Criminal Application No. 4/2011 (all unreported (CAT). **In the case of Shanti Hinducha and others** (1973) E.A 2017, held that the most persuasive reason that the applicant can show is that, the delay had not been caused or contributed by dilatory conduct on his part.

In this application, the applicant has given one reason that the copy of the impugned judgment was not supplied to him on time. It was supplied after 30 days had lapsed, for that reason, we count out the days lost before he was supplied with the copy of judgement. Therefore the counting starts from when he was supplied with the copy of judgment, that was on 16/09/2019 up to 15/10/2019 when he filed this application. Accounting for these days, the applicant informed the court that, he had to find the advocate and find the money to pay him before filing the application.

I understand that it can be a reason, but with due respect to him, his intention to appeal against the decision of the District Court must have been formed on the date the judgment was delivered, which resulted into his conviction and sentence, the preparation ought to have started there. The lawyer was supposed to be procured immediately thereafter, and the money to pay him as well. It was expected that, after being supplied with the copy of judgment, he would have immediately filed an application for extension of time.

As already indicated, the law requires the applicant to account for every single day of delay. The general statement given by the applicant that he was finding a lawyer and the money to pay him, cannot be taken to have accounted for 30 days delayed from the date he was supplied with the copy of judgment on 16/09/2019 up to when he filed this application on 15/10/2019.

For that reason, I find that the applicant has failed to show good cause for his delay to file the appeal and the application for extension of time. The application is therefore dismissed with costs for want of good or sufficient cause.

It is so ordered.

**DATED at MWANZA this 06<sup>th</sup> day of May 2020**



**J. C. TIGANGA**

**JUDGE**

**06/05/2020**

Ruling delivered in open chambers in the absence of the parties but with instruction that they be informed of the results.



**J. C. TIGANGA**

**JUDGE**

**06/05/2020**

