IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE DISTRICT REGISTRY OF KIGOMA)

AT KIGOMA

(APPELLATE JURISDICTION)

MISC. CRIMINAL APPLICATION NO. 4 OF 2021

(Arising from Criminal Revision No. 6/2020 High Court of Kigoma, Criminal Appeal No. 10/2019 Kibondo District Court, before Hon. F.Y. Mbelwa – RM, Original Criminal Case No. 31/2019 of the Kibondo Urban Primary Court)

HARUNA CHAKUPEWA ..... APPLICANT

VERSUS

PATRICK CHRISTOPHER NTALUKUNDO ..... RESPONDENT

R U L I N G

3rd August & 9th August, 2021

L.M. Mlacha, J.

This is a ruling in respect of an Application filed by the applicant, Haruna Chakupewa, seeking to extend the time prescribed for giving Notice of Appeal against the decision and orders of this court made in Criminal Revision No. 6/2020 (Matuma, J.). The application is made under section 11 (1) of the Appellate Jurisdiction Act, Cap 141 R.E. 2019 and is supported by the affidavit of Masendeka Anania Ndayanse. The respondent, Partick Christopher Ntalukundo was dully served and filed a counter affidavit in opposition.

The applicant was represented by Mr. Masendeka Anania Ndayanse while the respondent had the services of Ms. Joyce Godfrey. Hearing was done by oral submissions.

It was the submission of Mr. Masendeka that the decision of this court has an illegality calling for extension of time so as to allow the Court of Appeal to make the necessary orders. Giving details, counsel told the court that he lodged an application for Inspection but the judge took it as a Revision and decided it as a revision matter. He proceeded to submit that the car which is the subject of the case was sent to the Police Station by the Primary Court Magistrate against the orders of the District Court. He added that the case has peculiar circumstances, a shameful situation.

Submitting in reply, Ms. Joyce said that there is nothing illegal in what was done by the judge. She stressed that the judge took the matter as a revision because Inspection is usually done by the court suo mottu which was not the case. Counsel proceeded to say that the applicant has failed to account for each day of delay as required by the Law. Giving details, he said that, there was a delay of 104 days which could not be accounted for. She referred the court to the case of **Zawadi Msemakweli v. NMB PLC**, Civil Application No. 221/18/2018 and argued it to dismiss the application.

Mr. Masendeka made a rejoinder and stressed that his application is not based on the Principle of counting days but the illegalities of the decision of this court.

I have examined the affidavits and considered the submissions made before me carefully. I am invited to extend the time on the basis of illegality of the decision of this court. Counsel does not want me to consider the principle of accounting for each day of delay. But I don't see the way I can dispense of the requirement to account for each day of delay for there must be good reasons to convince the court before extending the time. The good reasons are usually picked from the account.

When the counsel for the applicant was challenged to make the account, he said that his application is not based on the delay but illegality. I think, with respect, he was wrong. Basing his application on illegality of the decision did not take away his duty to account for each day of delay. Rule 68 (1) of the Court of Appeal Rules required him to lodge the Notice of Appeal within 30 days. He did not do so. It is now over 104 days. In the absence of an account for the delay of 104 days, which is a considerable long period, I will find it difficult to allow this application.

What about the illegality? Much as it is correct that illegality in the decision sought to be appealed against is a good ground for extending the time, but I don't think that there is an illegality in this case. In this case the complaint is that, the applicant had filed an application for Inspection but the Judge have treated it as an application for revision which was not his case and dismissed it. The issue is whether that was correct.

I have read the ruling of this court in (PC) CRIMINAL REVISION NO. 6 OF 2020. The Judge took it as a revision matter and reasoned that the revision was not legally before the court for the applicant had a right of appeal.

I think Matuma J. is correct in principle. The counsel for the applicant is the one who is mixing up issues. The court can hear an application for Revision suo mottu or on application by any of the parties. Revision is done under section 44 (1) of the Magistrates Court Act, Cap 11 R.E. 2021. It can make orders affecting the decisions of the lower courts. It can give directions which must be complied with. That can also be done in the exercise of its powers of Inspection. Inspection is done by the court suo mottu. Like Matuma J., I am not aware of the practice or procedure which allows parties to file an application for Inspection. It is opened and done by the court only. It is a practice reserved to the court (High Court/District Court) and does not

extend to the parties whose rights are limited to Appeal and Revision (where applicable).

With those few remarks, the application is found to be devoid of merits and dismissed. It is ordered so.

L.M. Mlacha

Judge

12/8/2021

Court: Ruling delivered in open court in the absence of the applicant, represented by Masendeka Anania Ndayanse, Advocate and in the absence of the respondent.

Sgd: L.M. Mlacha

Judge

12/8/2021