IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

AT DODOMA

MISCELLANEOUS CRIMINAL APPLICATION NO. 88 OF 2020

(originating from District Court of Singida at Singida Criminal Case No. 89/2020)

ABUTWALIBU SIRAJI ISSA .....APPLICANT

VERSUS

ATHUMAN IGWE.....1ST RESPONDENT

JUMANNE KISUDA HANGO.....2NDRESPONDENT

RULING
(EX-PARTE)

17/05/2022 & 30/05/2022

KAGOMBA, J

This is a ruling on an application filed by ABUTWALIBU SIRAJI ISSA (the "applicant") vide a chamber summons made under section 25(1) (b) of the Magistrates Courts Act, [Cap 11 R.E 2019] seeking extension of time for the applicant to file his application for revision out of time. The application is supported by an affidavit of the applicant. The applicant also prays for costs of this application as well as any other relief this court may deem equitable and just to grant.

In the supporting affidavit, the applicant has provided a detailed account of events leading to the impugned decision in Criminal Appeal No. 18 of 2020, the decision which the applicant says he was not a party to it.

The applicant states that the appeal was filed by his former co-accused one Jumanne Kisuda Hango, who together with the appellant and one Thabit Issa Gau, were charged for obtaining money amounting to Sh. 9,500,000/= by false pretenses in the original Criminal Case No. 89 of 2020 instituted by the 1st respondent/complainant at Singida Urban Primary Court. The appellant was convicted and sentenced to pay a fine of Tsh. 150,000/= or in default, to serve four months imprisonment as well as to pay the complainant Tshs. 4,750,000/= being a half of the money the complainant had given the applicant and the 2nd respondent for purpose of buying sunflower seeds. The said money was lost in that business. The other Tsh. 4,750,000/= was to be paid by the 2nd respondent, so as to make a total of Tsh. 9,500,000/=. This is after the trial Primary Court had found the other accused, the said Thabit Issa Gau, blameless and thus acquitted him.

The applicant further states in his affidavit that he was ready to comply with the decision of the trial Primary Court. However, his co-convict, who is the 2nd respondent -Jumanne Kisuda Hango, was aggrieved and decided to appeal on his own. That appeal is what gave rise to the impugned judgment, which the applicant seeks to file an application for its revision out of time.

The 1st respondent was appearing in court spasmodically while the 2nd respondent was not appearing all. For this reason, an order for publication of summons to call them for the hearing of this application was made. The

publication was done since September, 2021 still they did not turn up in court. Thus, this court ordered the application to be heard *ex parte* against the respondents where Mr. Onesmo David, learned Advocate, appeared for the applicant and argued the application exparte.

Mr. David submitted along the lines of what was averred in the applicant's affidavit. He said the impugned judgment of the first appellate Court, which implicated the applicant, was delivered on 03/9/2020. That the applicant filed this application on 20/10/2020 being only 17 days after delivery of the said judgment. Mr. David stated that the applicant could not file his application for revision timely because he was not aware of the decision in the District Court as he was not a party to that appeal preferred by the 2nd respondent.

Mr. David further submitted that there exists a triable point of law in the intended revision as to whether the criminal case filed by the 1st respondent at the trial court was a criminal case or a civil matter, noting that the case arises from a business transaction that had no any element of criminality. In this connection, the case of **Principal Secretary Ministry of Defence and National Service v. Devram Valambhia [1992] TLR 195** was cited as an authority for the legal proposition that when there is a point of illegality, it shall be a sufficient ground for granting of application to extend time, despite delay.

In applications for extension of time like the one before me, there is always one issue to be determined. The issue is whether the applicant has shown or adduced sufficient cause for his application to be allowed. In **Munello v. Bank of Tanzania [2006] EA 227** it was stated that what amounts to sufficient cause has not been defined, but a number of factors have to be put into account, including whether or not the application has been brought promptly, absence (if any) of valid explanation for delays or lack of diligence on part of the applicant.

The cause of the delay has to be pleaded, particularly in the supporting affidavit. What is stated in the pleading is what the court will consider in determining the application as parties are bound by their pleadings as it was held in **James Funke Gwagilo v. The Attorney General [2004] T.L.R 161** and in other cases.

From the above background, the duty of this court in this application is twofold: **one**, to make a finding as to whether the applicant has shown sufficient cause to be granted the extension of time and proceed to grant the application accordingly. **Two**, to make a finding that the applicant has not shown any sufficient cause and proceed to dismiss the application accordingly.

In this application, both the applicant, in his affidavit, and his advocate during oral submission in court have adduced one main cause for the delay, that the applicant was not aware of the impugned judgment which, as far as the applicant is concerned, was delivered in *absentia* as he was not a party to the appeal.

I have read the typed judgment of the District Court of Singida, which gave raise to this appeal. At the end of page 2 up to page 3, the District Court confirms that the appeal before it was not filed by applicant herein but by the 2nd respondent herein. Unless the contrary was to be shown by the respondents, who did not appear before me to oppose the application, I find this reason sufficient to grant the application. It is logical that as the applicant was not a party to the appeal, he could not be expected to know what was happening about it. As he stated in paragraph 6 of the supporting affidavit, the applicant was continuing with his daily activities as he was not involved by the 2nd respondent in any way in the said appeal. Under such circumstances, it will be unfair to blame the applicant for not taking timely action to wrestle that judgment.

I am alive to the requirement stated in various decisions of the Court of Appeal, such as in **Lyamuya Construction Ltd v. Board of Trustees of Young Women Christian Association of Tanzania**, Civil Application No. 2 of 2020 that the applicant must, *inter alia*, account for each day of delay. I am also mindful of the requirement of the law that an application for revision for criminal matters arising from District Court to this court, for matters arising from Primary court, has to be made within 30 days from the date of that decision. However, with the special circumstance prevailing in this application, that the applicant was not a party to the appeal whose decision he intends to be checked, I resist to impose on the applicant any requirements of a general nature. I think with the existing special circumstance justice will require this court to dispense with those other requirements.

In the upshot, I think sufficient cause for delay has been shown and accordingly, I grant this application. The applicant has 30 days to file his application for Revision if he still wants to do so.

It is ordered accordingly.

Dated at Dodoma this 30th day of May, 2022

ABDI S. KAGOMBA
JUDGE