

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**[IN THE DISTRICT REGISTRY OF ARUSHA]**

**AT ARUSHA**

**MISC. CRIMINAL APPLICATION NO. 36 OF 2021**

(Originating from Criminal Case No. 152 of 2019, Karatu District Court)

**THE REPUBLIC.....APPLICANT**

**VERSUS**

**ROSE JOHN .....RESPONDENT**

**RULING**

11<sup>th</sup> & 27<sup>th</sup> July 2022

**TIGANGA, J.**

In this application, the Republic herein after referred to as the applicant applies for an order for extension of time to file an appeal to the High Court against the decision of the District Court of Karatu (Mbonamasabo – SRM) which was delivered on 29<sup>th</sup> April 2020.

The application was preferred by a chamber summons, which was supported by an affidavit sworn and filed by Ms. Sabina Silayo, State Attorney of the National Prosecution Service Office, Arusha. The application was filed under section 379 (2) of the Criminal Procedure Act [Cap 20 R.E 2019].

The main reason for delaying was that, the proceedings and Judgment was not supplied on time. That, even after they were supplied, the original records were misplaced in the process of relocating from one building to another when they were shifting from the former office to the new office. Thus, the main ground for extension of time is illegality of the sentence passed by the trial court.

Hearing of the application was conducted *ex parte* following the facts that the respondent could not be found to be served. The Republic was represented by Ms. Akisa Mhando, Learned Senior State Attorney who submitted that, the ground for extension is mainly illegality of the sentence passed by the trial court. Substantiating her argument, she said, section 241 of the Penal Code [Cap 16 R.E 2019] under which the accused person stood charged, provides for a five years jail sentence.

She submitted further that, she is aware that the word liable means, it is not always mandatory, it means, it may be less than that term, or an alternative sentence. Therefore, in her view, the sentence imposed did not take into account the nature of the offence the way it was committed and the injuries sustained by the victim. At the end, she prayed for the time to be extended so that they can challenge the illegality in the sentence.

Cementing her argument, she cited the case of **Ngolo Ngagaja vs. The Republic**, Criminal Appeal No. 331 of 2017 – CAT – Tabora (unreported) at page 13 first paragraph in which it was held that, illegality is a good cause for extension of time.

I have passed through the application and the supporting affidavit as well as the submission filed in support of the application. I find that, the ground for the application is illegality. It is established and now part of our law as propounded by the Court of Appeal of Tanzania and this court in various decisions which I need not to list here, but one of them is the case of **Ngolo Mganga vs. The Republic**, (supra) cited by the learned Senior State Attorney, in her submissions, which also relied with approval on the case of **VIP Engineering and Marketing Limited and two others vs. Citibank Tanzania Limited**, Consolidated Civil Reference No. 6, 7 and 8 of 2006, where it was held *inter alia* that;

*It is a settled law that, a claim of illegality of the challenged decision constitutes sufficient reason for extension of time under Rule 8 (Now rule 10 of the Court of Appeal Rules) regardless of whether or not a reasonable explanation has been given by the applicant under the rules to account for delay"*

The court went further and held that,

*"The purpose for which extension of time should be granted is to avail chance for the appellate court to correct the anomaly."*

In its further finding relying on its previous position in the case **TANESCO Vs. Mifungo Leonard Majira and 15 others**, Civil Application No. 94 of 20, where it was held inter alia that;

*"Not withdrawing the fact that, the applicant in the instant application has failed to sufficiently account for the delay in lodging the application, the fact that there is a complaint of illegality in the decision intended to be impugned suffices to move the court to grant extension of time so that the alleged illegality can be addressed by the court."*

In this application, the Learned State Attorney relied on the illegality of the sentence, imposed to the respondent, which I also find to be correct. Relying on the above cited authorities of the Court of Appeal of Tanzania, I find the application to be meritorious and therefore, hereby granted. The applicant is given 21 days within which to file an appeal as prayed. It is accordingly ordered.

**DATED** at **ARUSHA**, this 27<sup>th</sup> day of July 2022



  
**J. C. TIGANGA**

**JUDGE**