

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(SUMBAWANGA DISTRICT REGISTRY)

AT SUMBAWANGA

MISCELLANEOUS CRIMINAL APPLICATION NO. 29 OF 2022

(C/O Mlele District Court Economic Crimes Case No. 2 of 2022)

(B. M. AHMED, RM)

ZAINABU D/O ABDALLAH APPLICANT

VERSUS

THE REPUBLIC RESPONDENT

RULING

Date: 13/07 & 31/08/2022

NKWABI, J.:

In the District Court of Mlele at Inyonga, the applicant was convicted and sentenced for unlawful possession of Government Trophies contrary to section 86(1) and (2) (b), (c) (ii) of the Wildlife Conservation Act No. 5 of 2009 as amended. She was sentenced to pay fine at the tune of T.shs 5,845,000/= in default to serve 20 years imprisonment.

She delayed to accordingly file her appeal in this Court on time. The application is brought under the provisions of section 361 (1) (b) and (2) of the Criminal Procedure Act Cap. 20 R.E. 2019. It is supported by the affidavit duly sworn by the applicant as well as that of the Prison officer in-charge of Mpanda remand prison.

In the unopposed applicant's affidavit, the applicant asserts that he lodged his notice of intention to appeal and petition of appeal to the High Court on time via prison authority. He further averred that failure to lodge the appeal on time was due to computer machine being broken down at the particular time/date.

In the affidavit duly sworn by the officer in-charge of Mpanda remand prison it is averred in the 2nd paragraph of the affidavit that:

"That the reason attributed of the appeal delayment was caused by my office due to when the applicant convicted and according to information I received is that at that time there was only one computer machine which was broken up so my office failed to comply with section 361 (1) (b) of the CPA Cap. 20 R.E. 2002."

When this application was called-up for hearing, the applicant appeared in person on the one hand while the respondent was ably represented by Ms. Marietha Maguta, learned State Attorney.

Submitting in chief, the Applicant only prayed that her application be granted because at the time she was supposed to lodge her notice of intention to appeal, she was told that the computer had broken down.

Ms. Maguta in reply submission resisted the application contending that the claim that the computer had been broken down. She questioned why there are other appeals for the same time. She prayed that this application be dismissed. Ms. Maguta added that there ought to have an affidavit of a person who was working on the computer at the particular time.

In rejoinder submission, the Applicant had nothing useful she merely prayed this Court to assist her.

I accept the argument of Ms. Maguta that the affidavits in support of this application contain only hearsay evidence. There ought to be an affidavit of the person who was operating or working on the computer. There is none thus violating the law including the case laws like **Anatol Peter Rwebangira v. The Principal Secretary, Ministry of Defence and National Service & The Hon. Attorney General**, Civil Application No. 548/04 of 2018 CAT (unreported) which quoted with approval the case

Salima Vuai Foun v. Registrar of Co-Op Societies & 3 Others

[1995] T.L.R. 75 where the Court of Appeal of Tanzania clearly stated:

1. *"Where an affidavit is made on information, it should not be acted upon by any court unless the sources of information are specified.*
2. *As nowhere in the affidavit, either as whole or in any particular paragraph, it is stated that the facts deposed to or any of them, and if so which ones, are true to the deponent's knowledge, or as advised by his advocate, or are true to his information and belief, the affidavit was defective and incompetent, and was properly rejected by the Chief Justice."*

See also **NBC Ltd v. Superdoll Trailer Manufacturing Company Ltd**, Civil Application No. 13 of 2002 (unreported) the Court of Appeal of Tanzania was categorical that:

"... an affidavit which mentions another person is hearsay unless that other person swears as well."

It is trite law that each day of the delay must be adequately explained, see **Bushiri Hassan v Latifa Lukio Mashayo**, Civil Application No. 192/20 of 2016 CAT (unreported) where it was held:

"... Delay of even a single day has to be accounted for otherwise, there would be no point of having rules prescribing periods within which certain steps have to be taken."

In the premises this application is devoid of merits. I dismiss it.

It is so ordered.

DATED at SUMBAWANGA this 31st day of August 2022.




J. F. NKWABI
JUDGE