

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MUSOMA SUB REGISTRY

AT MUSOMA

(PC) CRIMINAL APPEAL NO 13 OF 2022

(From the decision of the District Court of Bunda at Bunda in Criminal Application No 4 of 2021, Original Primary Court Ikizu Criminal Case No 53 of 2021)

REGINA STEPHANOAPPELLANT

VERSUS

MGAJA KHAMIS RESPONDENT

JUDGMENT

19th September & 19th September, 2022

F. H. Mahimbali, J.

The appellant has been aggrieved with the decision of the District Court in which it refused to grant her application for extension of time to file appeal out time against the decision of the trial court.

Originally, the appellant was charged and convicted by the trial court on charge of malicious damage to property. She was consequently sentenced to pay a fine of 50,000/= or serve a custodial sentence of three months. She paid the fine. That was on 24/9/2021. Later, on 7/12/2021, she filed an application for extension of time under section

14 (1) of the law of Limitation Act, Cap 89 to file appeal out of time at the District Court of Bunda in which it dismissed. The application for want of sound reasons.

In this appeal, the appellant has preferred a total of five grounds of appeal. However, in digest of the same can be condensed into two main grounds.

- That there were sufficient grounds.
- That there was an illegality.

During the hearing of the said appeal both parties appeared in person and each adopted her/his grounds of appeal and reply to the appeal to form part of their submissions.

I have digested the appellant's grounds of appeal, and what transpired at District Court and trial court.

With the accounting of each day of delay, the appellant failed to account for each delayed day and did prove the said sickness. It is trite law that delay even of a single day is sufficient to disallow the application. (see **Tanga Cement Company Limited vs Jumanne D. Masangwa and Another**, Civil application No 6 of 2001, **Wambura N.**

J. Waryoba vs The Principal secretary Ministry of Finance and Another, Civil application No 225/01 of 2019)

On illegality there is no any clear illegality pointed out as claimed. For the ground an illegality to stand, must be clearly established and not that which is to be traced by much efforts (see **VIP Engineering and Marketing Limited and three others vs Citibank Tanzania Limited**, Consolidated civil reference No 6, 7 and 8 of 2006).

It is trite law that granting of extension of time is purely courts discretionally power. The appellate court can only interfere, if it is satisfied that the decision is clearly wrong upon misdirection or that it has acted on matters on which it should not have acted or because it has failed to take into consideration matters which should have taken into consideration and in doing so arrived at a wrong decision (see **Mbogo and Another vs Shah** (1968) EA 93 at page 94 as quoted in the case of **Karibu Textile Mills Limited vs Commissioner General Tanzania Revenue Authority**, Civil Reference No 21 of 2017, CAT at Dar es Salaam at page 12).

I have examined the material on record and given a careful consideration to the grounds of appeal filed and reply thereto in considering this appeal. Admittedly, it has not been possible to see the

accounting of the delayed days, neither has it been easy to find the said illegality.

All this said and considered, the appeal is dismissed with costs.

As regards to the land dispute, I may advise the parties to channel it in a proper legal forum for the lasting solution. Otherwise, I cannot turn myself to land court now to determine the said dispute on who is the rightful owner of the said disputed land.

I so order and find

DATED at MUSOMA this 19th day of September, 2022.



F. H. Mahimbali

JUDGE

Court: Judgment delivered this 19th day of September, 2022 in the presence both parties and Mr. Gidion Mugo, RMA.

Right to appeal explained.

F. H. Mahimbali

JUDGE