

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF ARUSHA
AT ARUSHA

MISC. CRIMINAL APPLICATION NO. 36 OF 2022

*(C/f PC Criminal Appeal No. 62 of 2021, at the Resident Magistrate Court for Arusha at Arusha
Extended Jurisdiction, Carried from High Court Arusha Registry, Criminal Appeal No.15 of 2021,
originating from Criminal Revision No. 6 of 2021 at the District Court of Karatu and Criminal case
No.249/2021 at Karatu Primary Court)*

ZAKARIA HHALUU APPLICANT

Versus

JOSHUA NANGAI BAYNETRESPONDENT

RULING

Date of last Order: 30-1-2023

Date of Judgment: 13-2-2023

B.K.PHILLIP,J.

This application is made under section 11 (1) of Appellate Jurisdiction Act (Cap 141 R.E.2019). The applicant's prayers are reproduced verbatim hereunder

- (a) That, this Court be pleased to grant extension of time for applicant to file Notice of Appeal and Application for Certification of the point of law worth consideration by the Court of Appeal of Tanzania against the judgment and decree in Appeal of the Court of Resident Magistrate's for Arusha at Arusha-extended jurisdiction Hon. R. A. Ngoka, SRM with extended jurisdiction in PC Criminal Appeal No. 62 of 2021 dated 30th March 2022 and delivered on 5th May 2022 out of time.*
- (b) Costs abide the outcome.*

The application is supported by an affidavit sworn by applicant and the Respondent filed a counter affidavit in opposition to the application. Before going to the arguments raised by parties, let me give a brief background to this application. The Court's records reveal that the applicant herein was the appellant in the aforementioned PC Criminal Appeal No. 62 of 2021. His appeal was dismissed. Aggrieved by the dismissal of his appeal, the applicant wants to appeal against the same but the time for lodging the notice of appeal and the application for leave to appeal to appeal to the Court of Appeal on point of law has elapsed. Thus, he has been compelled to file the instant application.

Mr. Ephraim A. Koisenge and Mr. Samwel S. Welwel, learned Advocates appeared for the applicant and the respondent respectively. The application was heard by way of written submissions. Both sides filed their submissions as ordered.

Submitting for the application, Mr. Koisenge adopted the contents of the affidavit in support of this application to form part of his submission. His arguments were to the effect that the impugned judgment was delivered on 5th May 2022 not 30th March 2022 as indicated in the typed copy of the impugned judgement supplied to the parties. The applicant requested to be supplied with the copy of the impugned judgment through a letter dated 31st May 2022 which is attached to this application as an annexure. On 3rd of June 2022 the applicant filed a notice of appeal which was rejected by the Court for being defective. Thereafter the applicant started the

process for filing notice of appeal afresh but time for filing the same had already expired.

Mr. Koisenge maintained that the provisions of the law under which this application is preferred, requires the applicant to disclose sufficient reasons for the delay. This Court has discretionary powers to grant extension of time sought in this application. To support his position, he cited the case of **Michael Lessani Kweka Vs John Eliafye (1997) TLR 152** and **Samson Kishosha Gabba Vs Charles K. Gabba (1990) TLR 133**. It was Mr. Koisenge's contention that this application was filed on 21st June 2022 while the impugned judgement was delivered on 5th May 2022. The last day for filing the notice of appeal was 4th June 2022. Counting from the date this application was filed, only 15 days had lapsed from the date the notice of appeal was supposed to be filed. The applicant has deponed in his affidavit that he had no advocate to represent him in the case and filed his notice of appeal on the 3rd of June 2022 within the time prescribed by the law but the same was rejected because it was defective. The applicant is a lay person. Thus, he had to start to look for a qualified legal practitioner to assist him in filing a proper notice of appeal and managed to get one on 10th June 2022. The preparation for filing the instant application started forthwith and on 21st June 2022 the instant application was filed in Court.

Mr. Koisenge pointed out that in determination of an application for extension of time the Court has to consider the following; one, whether the applicant accounted for the delay. Two, the delay must not be inordinate. Three, whether the applicant acted diligently,

without negligence or sloppiness in the prosecution of the action he intends to take. Four, existence of any other sufficient reasons for delay or important point of law such as illegality. To cement his argument, he cited the case of **Lyamuya Construction Company Limited Vs Board of Registered Trustees of Young Women's Christian Association of Tanzania, Civil Application No.2 of 2010** and **Silo Gadiye Hheke vs Massay Amnay, HC, Misc. Land Application No. 81 of 2020** (both unreported). He was of the view that the applicant has properly accounted for the days of delay. He acted reasonably in pursuing his case and the delay of 15 days is not an ordinate delay. He prayed this application to be allowed.

In rebuttal, like Mr. Koisenge, Mr. Welwel adopted the contents of the respondent's counter affidavit to form part of his submission. He joined hand with Mr. Koisenge on the factors to be considered in determination of an application for extension of time as stipulated in the case of **Lyamuya Construction Company Limited** (supra). He went on submitting that the applicant has failed to meet the conditions for granting the order for extension of time. Assuming that the applicant became aware of the impugned judgment on 5th May 2022 as deponed in his affidavit, then 26 days lapsed before the applicant made a request to be supplied with the copy of judgment for no good reason because he was personally present when deputy registrar delivered the judgment, thus he has failed to account for the said 26 days of delay, contended Mr. Welwel. He was of the view the applicant was not diligence in pursuing his case because he filed the notice of intention to appeal on the 3rd of June 2022 as per his

averment, that is, 4 days before the expiry of 30 days within which he was supposed to file the same.

In addition, Mr. Welwel submitted that the notice of appeal alleged to have been filed in Court on 3rd of June 2022 by the applicant does not bear a Court's stamp. Thus, it is doubtful if it was really filed in Court. Furthermore, he submitted that even if it is assumed that the said notice of appeal was filed on 3rd June 2022 and rejected as alleged by the applicant, the applicant would have filed the proper one in the next day, that is, 4th June 2022 taking into consideration that notice of appeal is a simple document to draft. He was emphatic that the applicant was just negligent.

Mr. Welwel, refuted Mr. Koisenge's argument that the applicant is a layman, thus he had to spend some time looking for an advocate to assist him. He contended that the applicant did not give any reasonable cause for his delay in seeking for legal advice. Being a layman cannot justify delay out of negligence. The applicant prosecuted his case from Primary Court, District Court and High Court unrepresented. Therefore his claim of being layman is unfounded, contended Mr. Welwel. He maintained that the Courts' records from the Primary Court to this Court do not reveal any serious legal issue worthy to be presented before the Court of Appeal. Thus, granting the order sought in this application will delay the respondent to enjoy his rights for no good reason and will be tantamount to supporting the applicant's ill motive. He distinguished the case of **Silo Gadiye Hheke vs Massay Amnay** (supra) from this application on the ground that it has different set of facts from the instant application

because in the said application the applicant spent 27 days after recovery from sickness to seek for legal advice whereas in this case the applicant was not sick and there is no justification for the time spent allegedly looking for an advocate from 5th May 2022 to 10th June 2022 which is almost 35 days. Moreover, Mr. Welwel submitted the eleven days (11) days spent by the applicant for preparation and filing this application are not justified. He insisted that accounting for the days of delay has to start from date when the applicant became aware of the impugned judgment. In this case is the 5th day of May 2022.

Having analysed the arguments raised by the learned Advocates let me proceed with the determination of the merit of this application. I have carefully gone through the contents of applicant's affidavit, respondent's counter affidavit and the submission made by the learned Advocates. My task in this application is to determine whether or not the applicant has adduced good cause for the delay in filing the notice of appeal and the application for certification of the point of law.

It is a trite law that in an application for extension of time like the instant application, the applicant has to account for the days of delay by giving sufficient cause for the delay. This Court has discretionary powers to grant the extension of time or refuse to do so. However, that discretion has to be exercised judiciously. [See the case of **Lyamuya Construction Co. Limited** (supra)]

It is on record that the impugned judgment was delivered on 5th day of May 2022 in the presence of both parties. As correctly submitted

by Mr. Welwel that the days of delay are reckoned from the date the applicant became aware of the impugned decision. So, counting from 5th May 2022 to 21st June 2022 when applicant filed this application, the applicant has to account for 48 days of delay. As correctly argued by Mr. Welwel, the notice of appeal dated 3rd June 2022, relied upon by Mr. Koisenge in his submission does not bear the Court's stamp. However, the applicant has deponed in his affidavit that the same was rejected on the ground that it was defective. Therefore, it is understandable why it is not stamped. Since it was rejected, it means that it was returned to the owner. Under the circumstances, I am inclined to agree with Mr. Koisenge that the applicant made efforts to file his notice of appeal on 3rd June 2022 within the time prescribed by the law, but it was rejected. I do not see any plausible reason to doubt what has been deponed by the applicant in his affidavit.

There is no dispute that the applicant was obliged to account for the days of delay. I am alive that the reasons for delay are not exhaustive and there is no hard and fact rule on what amounts to sufficient cause. Each case has to be decided on its own merit. In the case of **Yusufu same and another Vs Hadija Yusufu, Civil Appeal No.1 of 2002**, (unreported), the Court of Appeal said the following;

"It should be observed that the term "sufficient cause" should not be interpreted narrowly but should be given wide interpretation to encompass all reason or causes which are outside the applicant's power to control or influence resulting in delay in taking any necessary step"

In the instant application, counting from 5th May 2022 to 10th June 2022 when the applicant alleged that he managed to get an advocate to assist him 37 days lapsed. In my considered opinion spending 37 days looking for an advocate for a layman who has been prosecuting his case on his own is reasonable period, bearing in mind that he took the necessary steps by filing a notice of appeal on 3rd June 2022 but he was not successful. This proves that he was not idle and being a layman he tried his level best to pursue his case. Again, counting from 10th June 2022 when the applicant alleged that he managed to get an advocate to assist him to 21st June 2022 when the instant application was filed 12 days lapsed. However, I am of a settled opinion that spending 12 days for preparation of documents for filing this application is a reasonable time. Taking into account in totality the circumstances of this case, it is the finding of this Court that the applicant has accounted for all days of delay.

In the upshot, this application is granted. The applicant has to file the notice of appeal and the application for certification of a point of law within ten (10) days and twenty one (21) days respectively from the date of this order. Each party will bear his own costs.

Dated this 13th day of February 2023.




B.K.PHILLIP

JUDGE.