

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE DISTRICT REGISTRY OF ARUSHA)**

AT ARUSHA

MISC CRIMINAL APPLICATION NO. 37 OF 2021

(Originating from Criminal Case No. 102 of 2019 of the District Court of Karatu)

THE REPUBLIC.....APPLICANT

VERSUS

WILLIAM S/O AMAMU.....RESPONDENT

RULING

10th & 11th May, 2022

TIGANGA, J.

This Ruling is in respect of an application filed by the applicant, Republic, seeking for extension of time to file an appeal to the High Court to challenge the sentence of Karatu District Court in Criminal Case No. 102 of 2019 in which the respondent was charged, found guilty and convicted of the offence of causing grievous harm contrary to section 225 of the Penal Code [Cap 16 R.E. 2002], and was sentenced to nine months' conditional discharge.

The application was filed under section 379(2) of the Criminal Procedure Act [Cap 20 R.E. 2019] and was supported by an affidavit of Sabina Silayo, State Attorney. The reasons for the application as deposed in the affidavit are as follows, **one**, illegality of the decision sought to be challenged and **two**, the misplacement of the case file.

When the application was filed, physical service to the respondent was not possible, as the respondent was not traceable. The service to the respondent was done by way of publication which was done through Mwananchi Newspaper of 23/10/2021. Despite that service by publication, the respondent did not appear, therefore, the application was heard *ex parte*.

At the hearing of this application, the applicant was represented by Ms. Akisa Mhando, learned Senior State Attorney, in her submission in support of the application started with the ground of illegality as the ground for extension of time. In support of this ground, she submitted that, section 225 of the Penal Code (*supra*) upon which the respondent was convicted provides for the sentence of seven years' jail imprisonment for the person found guilty and convicted for causing grievous harm, but in this case, the trial Magistrate sentenced the accused (now the respondent) to a nine months' conditional discharge. In the applicant State Attorney's view, the sentence is illegal, therefore the applicant be given opportunity to challenge the sentence by way of appeal.

Arguing in support of the second ground upon which the application is based she said, after the judgment of the District Court, the applicant is filed a notice of intension of appeal, but unfortunately before filing an

appeal before the High Court, there was a re-location exercise of the office of the National Prosecution Services, Arusha Region from the NIC building to Hazina building. According to her, that exercise, resulted into the misplacement of the case file. When the same was recovered, it was already late for the applicant to file an appeal. That is why the applicant filed this application for extension of time to be allowed to file an appeal out of time. The learned Senior State Attorney asked for the application to be allowed basing on the two grounds.

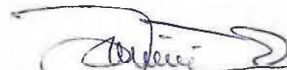
Following that state of affairs, the only material available for the Court to consider, is the application and submissions by the learned Senior State Attorney. Basing on these materials, it can be ascertained that the applicant relied on the illegality of the decision sought to be challenged as one of the ground for extension of time. It is now the settled law that, once illegality of the decision sought to be challenged is one of the ground for extension of time, then the court must grant the application. See the case of **Lyamuya Construction Company Ltd vs The Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No 2 of 2010 Court of Appeal of Tanzania - Arusha.

Now since in this application, the applicant has pleaded illegality as the ground for the application and has went a step a head to point out the alleged illegality, it suffices to say that the applicant has managed to establish good cause for extension of time.

That said, the application is thus allowed, the applicant is given 14 days within which to file an appeal to the High Court.

It is accordingly ordered.

DATED at ARUSHA, this 11th day of May, 2022.



J.C. TIGANGA

JUDGE