THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

LAND DIVISION

AT DAR ES SALAAM

MISC. CRIMINAL APPLICATION NO. 06 OF 2022

(Application for extension of time to file Notice of Appeal from decision of the Pre-bargaining Order)

DEVOTHA AMANDUS NGONYANI..... 1ST APPLICANT

PASCAL PETER MTWANGO.....2ND APPLICANT

VERSUS

THE REPUBLIC .....RESPONDENT

RULING

Hearing date on: 31/3/2022

Ruling date on: 21/4/2022

NGWEMBE, J:

The applicants Devotha Amandus Ngonyani and Pascal Peter Mtwango through their advocate January R. Kambamwene from S.A. Massati & Company advocates preferred this application for extension of time upon which may file ten (10) days' Notice of intention to appeal to this court from the decision of the trial court in Economic case No. 02 of 2021. The alleged offending judgement was born out of plea-bargaining agreement between the applicants and the Republic.

The applicants moved this court under section 361 (2) of Criminal Procedure Act, supported by an affidavit of the learned advocate Kambamwene. In turn the Republic opposed the application by filing an affidavit in opposition (counter affidavit) sworn by the learned State Attorney Mr. Edgar Evarist Bantulaki.

All pleadings being completed, this court invited both counsels to address the court therein. While the applicants were represented by learned counsel Kambamwene, the Republic was represented by Ms. Evelyne Ndunguru senior State Attorney and Mr. Edgar Evarist Bantulaki. Both counsels argued the application professionally, this court appreciate for their industrious input.

Brief recap of background of this application, traces back from the decision in Economic Case No. 02 of 2021 between the two applicants and the Republic, whereby such case ended up into plea-bargaining agreement. Out of that agreement, the trial court convicted both applicants and sentenced them as they agreed. However, after lapse of seven (7) months, the applicants gained momentum to challenge that agreement, but unfortunate may be for them, they were already out of time, hence this application for extension of time within which to issue ten (10) days' notice to appeal to this court.

From that background, the applicants' advocate argued convincingly, that the applicants intend to challenge the sentence meted by the trial court based on illegalities apparent on the face of the record. Added that, the applicants being lay persons were not aware on the requirements of

issuing mandatory ten (10) days' notice to this court before filing their appeal.

Proceeded to argue that, plea bargaining is a new concept in our jurisdiction, hence the applicants were not aware on the mandatory requirement of issuing ten (10) days' notice to the High Court. Added, there are areas upon which, this court need to examine their legalities especially on the sentence passed by the trial court; one of them being excessiveness and cumulativeness of the sentence itself. Rested by asking this court to grant prayers in the chamber summons.

In response therein, Mr. Bantulaki argued quite forcefully, and rightly so to speak, that the applications intend to challenge a decision made out of consensus between the applicants and the Director of Public Prosecution. Proceeded to survey into the affidavit in support to the chamber summons and the advocate's arguments, thus noted none of them disclosed sufficient reasons for this court to grant the prayers in the chamber summons.

Further argued that, the issue of threats as per paragraph 4 of the affidavit is unclear, for they failed to clarify on who threatened them; when; and how? Cited section 194E of CPA, which conferred them, right to appeal against the sentence within forty-five (45) days, but were satisfied. As such this application is purely an afterthought.

Argued further that, the sentence of conditional discharge for twelve months was not excessive, rather was fair under section 38 of CPA compared to section 20 (4) of Wildlife Act, which attract severe sentence.

In respect to ancillary orders, he submitted that the confiscation or forfeiture of their properties were not appealable for they arose from a binding plea-bargaining agreement.

Insisted that the available remedy on plea bargaining agreement is to set aside and proceed with trial on merits. Finally, insisted that, the applicants have failed to account for the delay of seven months, since the final decision of the trial court. Rested by a prayer to dismiss this application.

In rejoinder the learned advocate reiterated to the submission in chief with addition that, the applicants were laboring under false impression that, they should not appeal against conditional discharge; compensation; and forfeiture of their properties. Rested by asking this court to grant orders in the chamber summons.

I have taken pain to peruse all relevant sections related to plea bargaining agreement as provided for, under Criminal Procedure Act. Section 194A to 194H which provide procedures of, plea-bargaining agreement and hons may be entered between an accused person and the DPP. Section 194E prohibit the accused, once enters into plea bargaining, means waives his right to a full trail and waives the right to appeal except as to the extent or legality of sentence. The law did not leave plea bargaining without safety valve against fraud or misrepresentation, rather the DPP may invoke section 194G (1) to apply in court to set aside the plea-bargaining agreement and proceed with trial on merits.

In fact, I agree with both counsels, that plea bargaining, despite being a new concept in our jurisdiction, it is statutory and is codified in our laws. Moreover, time limitation is provided therein in case the accused is

dissatisfied with the sentence reached in plea-bargaining. The aggrieved party may issue notice of intention to appeal as provided for under section 361 (1) (b). The time limitation to appeal against it is within forty-five (45) days from the date of finding, sentence or order. However, sub section (2) of section 361 of CPA, permit this court to admit an appeal upon disclosure of good cause for the delay.

In essence, the law is clear like a brightest day light that extension of time is upon disclosure of good cause. The term good cause is defined by Black's Law Dictionary (8th Edition) to mean a *legally sufficient reason. Good cause is often the burden placed on a litigant to show why a request should be granted or an action excused.*

Rightly so, the Court of Appeal in the case of **Night Support (T) LTD Vs. Benedict Komba, Revision No. 254 of 2008** insisted that time limitation is material point in the speedily administration of justice. The Court proceeded to hold:-

> *"Limitation is material point in the speedily administration of justice. Limitation is there to ensure that a party does not come to court as when he chooses"*

In similar vein, the Court of Appeal in the case of **Bushiri Hassan Vs. Latifa Lukio Mashayo, civil Application No. 3 of 2007** held:-

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

I fully subscribe to many precedents pronounced by this court and by the Court of Appeal in respect to time limitation. The essence of having time

limitation in every action be it civil or criminal in nature is comprised in a Latin Maxim of *interest Reipublicae ut sit Finis Litium,* meaning it is for the interest of the Republic that there should be an end to litigation.

Moreover, the Court of Appeal in **Civil Appeal No. 19 of 2016, Barclays Bank (T) Ltd Vs. Phylisianh Hussein Mcheni** at page 13 quoted the book of C.K. Takwani writes in Civil Procedure, with Limitation Act, 1963, 7th Edition, at page 782 observed:-

"*Statutes of Limitation are based on two well-known legal maxims:*

*(i) The interest of the State requires that there should be an end to litigation (**interest reipublicae ut sit finis litium**)*

(ii) *The law assists the vigilant and not one who sleeps over his rights (**Vigiiantibus non dormientibus jura – subveniunt)***

Much as I fully observe with critical minds those principles, yet I am not blind on exceptional circumstances up on which, time limitation may be extended to appeal to the superior court. For instance, when the appellant delayed to appeal due to good cause; or the delay was caused by inaction of the court in providing necessary documents; or illegalities apparent on the face of record; or in any way the delay was not caused by the appellant; the list is not complete. In anyway, the good cause should exonerate the applicant from being the source of delay.

Having so said, the question remains, whether the applicants have disclosed good cause for the delay of seven months from the date of pronouncement of conviction and sentence? Reading the contents of the affidavit in support to the application, they seem to intend to challenge both the conviction and sentence meted by the trial court. Further the

applicants seem to raise failure of the trial magistrate to consider the so-called mitigating factors raised by them soon after conviction. Above all, they seem to raise illegalities of plea-bargaining agreement.

Much as I would agree with the learned State Attorney, that the delay of seven months ought to be accounted for, yet the nature of this application and the intended appeal, I find it prudent to exercise my discretion to extend time as prayed in the chamber summons to allow them to lodge their notice of intention to appeal and appeal from the decision of the trial court.

In totality and for the reasons so stated, the interest of justice demands this application be granted as I hereby do. Applicants are granted ten (10) days to lodge their notice of intention to appeal. The ten days shall start running from the date of this ruling.

Order accordingly.

P.J. NGWEMBE

JUDGE

21/4/2022

Court: This ruling is delivered in chambers this 21st day of April, 2022 in the presence of Hassan Nchimbi advocate for the applicants and Ms. Evelyne Ndunguru Senior State Attorney for Republic/ Respondent.

Right to appeal explained

P.J. NGWEMBE

JUDGE

21/4/2022