

**IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA**  
**IN THE SUB- REGISTRY OF MANYARA**  
**AT BABATI**

**MISC. CRIMINAL APPLICATION NO. 6 OF 2023**

*(Arising from Criminal Appeal No. 9 of 2022 HC (T) Manyara sub-registry at Babati and originating from Criminal Case No. 66 of 2021 before a court of the resident magistrate of Manyara at Babati)*

**BARAKA LAURENT.....APPLICANT**

***VERSUS***

**THE REPUBLIC..... RESPONDENT**

**RULING**

*16<sup>th</sup> & 17<sup>th</sup> May, 2023*

***Kahyoza, J.:***

This is an application for extension of time to appeal against the decision of the district court. The applicant was found guilty of unnatural offence, convicted accordingly, and sentenced to serve a life imprisonment.

Aggrieved by the decision of the trial court, he lodged his appeal. Unfortunately, his appeal was struck out because it was lodged out time and without leave. Determined to appeal, the applicant instituted the instant application praying for extension of time to lodge his appeal out of time. The applicant filed an affidavit in support of his application and the respondent file a counter affidavit.

The issue is whether the applicant has adduced sufficient reason for delay. The applicant was unrepresented while Mr. Bizimana, State Attorney appeared for the Respondent.

The background of this matter is shown above that after his conviction and sentence the applicant lodged the appeal of which this Court struck it out on 7/12/2022. The applicant was convicted and sentenced by the court of the resident magistrate of Manyara at Babati on 24.3.2022. The applicant lodged the appeal on 22.11.2022. This Court found that the applicant was served with a copy of the judgment and proceedings on 20.9.2022 which he altered to read 11.10.2022. The changes were designed to bring his appeal within the time prescribed by law. Having found the applicant's deceit, the Court dismissed the appeal.

The application was instituted under section 361(2) of the **Criminal Procedure Act**, [Cap. 20 R.E. 2022], (the **CPA**) which provides that the High Court may admit an appeal notwithstanding that the period of limitation prescribed in this section has elapsed. The applicant has a duty to establish that he delayed to appeal for good cause.

The applicant's ground for delay is found under paragraph four of his affidavit which is that being a lay prisoner, his fellow prisoner assisted him to lodge the appeal. He added that without his (the applicant's) knowledge that prisoner who assisted him altered the date of receipt of a copy of judgment.

Mr. Bizimana, learned state attorney for the Respondent vehemently opposed the application. He averred in the counter affidavit and submitted vigorously, that the applicant did not adduce good cause for delay. He submitted that the applicant's contention that he did not know the law or the procedure to appeal was not sufficient. He submitted that the applicant is presumed to know the law. He added that even if it is presumed that the applicant did not know the law, the record shows that the trial court informed him his right to appeal. He was emphatic that the applicant was bound to adduce good cause for delay. To support his contention, he cited the case of **Thomas Msungwa V R.**, HC Mwanza Sub-Registry, Misc. Criminal Application No. 29/2022.

The respondent's state attorney submitted further that the applicant had duty to support the allegation that he was assisted by his inmate to lodge the appeal and that it was his inmate who altered the date on a copy of the judgment. He argued that the requirement to annex supplementary affidavit was stated in **Laurent Balthazar v. R.**, Misc. Criminal Application No. 29/2021 HC Bukoba Sub-registry (Unreported).

He prayed this Court to consider the applicant's attitude of altering the date on the judgment. He submitted that the applicant's act of tempering

with the date on the court's document, the judgment, was a criminal act. He concluded that the applicant did not adduce good cause for delay.

As stated an application for extension of time is granted upon an applicant exhibiting good caused for delay. The applicant did not exhibit good cause for delay. The record shows that the applicant obtained copies of judgment and proceedings on 20.9.2022 for no apparent reason he delayed to lodge his appeal. He resolved to alter the date to deceive the court that he received a copy of the judgment and proceedings on 11.10.2022. The applicant's act of altering the date to misinform the court that his appeal was within time, speaks louder that he had no good cause for delay. If he had a good cause for delay he would have applied for extension of time instead of forging the date of receiving a copy of the judgment and proceedings.

I considered also the applicant's ground for delay that he did not know the procedure to appeal so his inmate had to help him. This ground was opposed by the respondent's attorney that it was meritless. Indeed, it is meritless. The record shows that the trial court informed the applicant that he had a right of appeal. Even if, it is true that the he did not know the procedure to appeal, one would ask why did he alter the date to mislead the Court that his appeal was within time prescribed. He knew the procedure

that why when he found himself out of time he altered the date on the copy of the judgment. I do not buy the contention that the applicant delayed to appeal because he did not know the law or procedure of appeal. I find the applicant's ground of delay not a good cause envisaged by sub-section (2) of section 361 of the CPA.

Finally, I find the application for extension of time without merit and dismiss it.

It is ordered accordingly.



**J.R. Kahyoza,  
Judge  
17/5/2023**

**Court:** Ruling delivered in the presence of the applicant and Mr. Bizimana-SA assisted by Ester Malima -SA for the Republic. B/C Fatina present.

**J.R. Kahyoza,  
Judge  
17/5/2023**

**court:** Right of Appeal explained. If the accused person intends to appeal, he will have to lodge a notice of appeal within 30 days from today.

**J.R. Kahyoza, J.  
17/05/2023**