

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE SUB- REGISTRY OF MANYARA

AT BABATI

CRIMINAL APPLICATION No. 14 OF 2023

MASHAKA ISSA GWAY.....APPLICANT

VERSUS

REPUBLICRESPONDENT

RULING

Date:1/6/2023

BARTHY, J.

By chamber summons the appellant Mashaka Issa Gway had moved this court to grant the extension of time to file his appeal out of time, plus any other relief this court might deem fit and just to grant. The application was founded under section 361(1) and (2) of the Criminal Procedure Act, Cap 20 R.E. 2022 (to be referred to as the CPA).

This follows the applicant being found guilty of the offence of unlawful possession of government trophy contrary to section 86(1) and (2)(b) of the Wildlife Conservation Act, No. 5 of 2009 read together with Paragraph 14 of the First Schedule to and sections 57(1) and 60(2) of the Economic and Organized Crimes Control Act, [Cap 200 R.E. 2019], where



he was convicted and sentenced with district court of Babati to serve 20 years jail term.

The applicant intended to pursue his appeal to challenge the impugned decision, but being out of time he preferred the instant application.

The application was supported by the affidavit of the applicant where he deposed that, he was supplied with copies of proceedings and judgment on 20/7/2022. Then he engaged the services of advocate Makenzi from Dar es salaam to prepare and lodge his petition of appeal to the high court.

However, due to lack of communication and payments he learned his appeal has not been lodged and he was out of time. Hence, the applicant decided to file this application.

The respondent opposed the application in the counter affidavit sworn by Mbelike Daniel Mangweha the learned state attorney. She deposed that the applicant was negligent not to find out that his advocate was no longer prosecuting his appeal after the lapse of ten months.



At the hearing the appearance was the applicant in person and Ms. Mbelike Mangweha learned state attorney. The parties made their submissions orally.

The applicant on his brief submission in chief he prayed for extension of time to file his appeal out of time as he was in prison, he could not lodge it within time until his relatives helped him.

Ms. Mangweha on her reply submission she rebutted the application. She submitted that; the applicant is out of time to file his appeal. She went on to argue that on 20/7/2022 the applicant received the copy of the decision and the proceedings, then he had engaged the advocate from Dar es salaam to prepare for his appeal document. It was unfortunately that the advocate could not help him due to communication failure and lack of payment.

She went on to argue that, since the application is made under section 361(1)(2) of the CPA, Cap 20 R.E. 2022, which under sub section 2 it provides that, the high court can extend the time to file the appeal out of time if the appellant will show good cause.

To fortify her argument, she cited the case of **Benjamin Amon v. Republic**, Criminal Application No 106 of 2018, CAT at Dar es salaam on page 6 the court quoting with approval the case of **A.G v. Tanzania Port**

Authority and another, Civil Appeal No. 87 of 2016 where the court give factors to be considered in granting the extension of time to file the appeal out of time.

She further contended that, the applicant received copies of the judgment and proceedings on 20/7/2022 and he filed this application on 5/5/2023 which is about 10 months later. Ms. Mangweha further argued that the applicant did not show any sufficient good cause to have delayed for all 10 months which would convince the court granting the application. Since, the period of 10 months is an ordinant delay which has not been accounted for.

To this argument she cited the case of **Benjamin Amon (cited supra)**, where the court emphasized on accounting for each day of delay. Ms. Mangweha therefore prayed to this court to dismiss the application.

The applicant on his brief rejoinder he just maintained his argument and prayer made in his submission in chief.

Having heard the arguments of both sides and the pleadings related to this matter, this court is called to determine whether or not this application has advanced sufficient good cause to have the extension of time granted.

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The court has the discretion to grant extension of time to file the application, but that power must be used judiciously and in accordance to the law.

With regard to the present application, guided with the provision of section 361(2) of the CPA which provides;

*361 (2) The High Court may, **for good cause**, admit an appeal notwithstanding that the period of limitation prescribed in this section has elapsed. [Emphasis added].*

The term sufficient cause has not been clearly defined by any statute. There are various decisions of the court that gives guidelines or factors to be considered when the court determining the same. See **Bertha v. Alex Maganga**, Civil Reference No. 7 of 2016, Court of Appeal of Tanzania (unreported), also the case of **Benjamin Amon (cited supra)**, where Court of Appeal of Tanzania had pointed out for the factors to be considered before granting the extension of time to be as follows;

- a. The applicant must account for all the period of delay*
- b. The delay should be inordinate*
- c. The applicant must show diligence, and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take.*



d. If the court feels that there are other sufficient reasons such the existence of a point of law or sufficient important, such the illegality of the decision sought to be challenged.

Ms. Mangweha had claimed that the applicant was negligent as the delay was inordinate and he could not account for single day of delay in the period of 10 months. On the other hand the applicant claimed that his presence in the prison caused him to lose communication with his advocate only to find himself he is out of time to file this appeal.

The records show that the copies of the proceedings of the trial court was ready by 20/7/2022 and on the same day the applicant was supplied with those copies.

However, this application was lodged before this court on 5/5/2023 which is about 10 months later. The applicant just gave a general reason for delaying to lodge his appeal within time on the claim that he hired the advocate from Dar es salaam without accounting the delay of each day.

It is apparent that from the affidavit in support of the application that, the applicant could not give sufficient good cause for his delay, which was inordinate and by all means there was negligence on the part of the applicant as a he failed to account for almost 275 days of delay.



In the circumstances of this case, I find that the applicant did not give this court good and sufficient reasons to justify this court grant the extension of time. In that event, the application is devoid of merit and it is hereby dismissed.

It is so ordered.

Dated at Babati this 2nd of June, 2023.




G. N. BARTHY
JUDGE

Delivered in the presence of the applicant in person and Ms. Ester Malima the learned state attorney for the respondent.