

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE SUB- REGISTRY OF MANYARA

AT BABATI

CRIMINAL APPLICATION No. 16 OF 2023

(Arising from Criminal Case No. 21 of 2022 of Kiteto District Court)

SIKITIKO VICENT.....APPLICANT

VERSUS

REPUBLICRESPONDENT

RULING

Date: 27/6/2023 & 11/7/2023

BARTHY, J

The applicant herein was charged before the District Court of Kiteto (the trial court) facing with two counts of rape contrary to Section 130(1) (2) (a) and 131 (1) of the Penal Code [CAP 16 RE 2022] and impregnating a school girl. The trial court convicted the applicant on both counts and sentenced him to serve 30 years imprisonment on each count.

The applicant intended to challenge the said decision, but unable to do so timely. Hence, he has preferred the instant application under Section 361 (1) and (2) of the Criminal Procedure Act [CAP 20 R.E. 2022], (the CPA) seeking for the following reliefs;



- 1. That, this honourable court be pleased to extend time of filling my petition of appeal (out of time) in the High Court of United Republic of Tanzania.*
- 2. That, this Honourable Court be pleased to make any other orders or relief(s) as it deems fit and just to grant in this application.*

The application is supported by an affidavit sworn by the applicant himself. On the other hand, the respondent lodged a counter affidavit to contest the application.

When the application was called on for hearing, the applicant appeared in person while the respondent was represented by Ms. Esther Malima, learned State Attorney. On the date fixed for hearing the parties were invited to address the court orally.

The applicant in his submission in support of the application he urged the court to grant the prayer sought. He contended that, he had no money to hire the services of an advocate. He thus requested the prison officer to assist him, as he had no one to help him with the follow up.

On respondent's side, Ms. Malima before responding to the applicant's submission she prayed to adopt the respondent's counter affidavit sworn by herself to make part of her submission.



She went further arguing that, this application is found under section 361 (1) and (2) of the CPA which requires the appeal to be filed within 45 days from the impugned decision. However, upon good cause being advanced, the court may admit the appeal out of time.

She went on stating that, there are principles to be considered by court in granting the extension of time to file an appeal. She referred to the case of **Benjamin Amon v. Republic**, Criminal Application No. 106/11 of 2018, Court of Appeal of Tanzania at Dar es Salaam (unreported) where four principles were expounded as follows;

- I. The applicant must account for all the period of delay;*
- II. The delay should not be inordinate;*
- III. The applicant must show diligence and not apathy, negligence or sloppiness of the action that he intends to take; and*
- IV. If the court feels that there are other sufficient reasons, such as existence of a point of law of sufficient importance such as the illegality of the decision sought to be challenged.*



Ms. Malima further pointed out that, on paragraph 2 of the affidavit in support of the instant application, the applicant deposed that he was supplied with copies of the judgment and proceedings on 24/5/2022. Nevertheless, this application was filed in this court on 19/5/2023, which is about 360 days of later which are considered to be an inordinate delay.

She further contended that, the applicant ought to have accounted for each day of the delay, but he could not do so in his affidavit. There was the claim that the applicant had engaged an advocate Mr. Ayo to prepare his grounds of appeal, however there was no proof to support the claims.

Ms. Malima further argued that, the applicant has claimed that the advocate could not submit his petition of appeal because of poor communication and lack of payment. Nonetheless, these arguments were not supported by any proof.

She added that, the applicant was negligent as he could not prove as to when he got the legal assistance from prison officer. Again, she referred to the case of **Benjamin Amon v. Republic** (supra) where the court cited with approval the case of **Bushiri Hassan v. Latifa Lukio Mashayo**, Civil Application No. 3 of 2017 where the court held that, even a single day delay needs to be accounted for.



Ms. Malima was of the view that, the applicant ought to have given an account of each day of the delay but he has failed to do so. She invited the court to dismiss the application for want of merits.

The applicant on his rejoinder he reiterated his earlier prayer made on his submission in chief.

Having gone through the parties' rival submission and the pleadings of the parties, the sole issue for determination of this court is whether the applicant has advanced sufficient reason for the court to grant the application.

The instant application has been preferred under Section 361 (1) and (2) of CPA. The said provision requires an aggrieved party to lodge an appeal within 45 days which has to be preceded by notice which is required to be lodged within 10 days of the decision sought to be appealed against.

In case one fails to lodge the appeal within the prescribed period the remedy is to apply for extension of time under Section 361 (2) of the CPA. The said provision reads;

*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].*



It follows therefore that, in order to succeed in an application for extension of time, the applicant must demonstrate good cause. However, the quoted provision of the law does not state what constitutes good cause.

There is no law defining what constitute good cause, but the court in exercising its discretion what will determine what constitute good cause depending with the nature of each case. This was lucidly stated in the case of **Osward Masatu Mwizarubi v. Tanzania Fish Processing Ltd**, Civil Application No. 13 of 2010 (unreported) the Court of Appeal stated that: -

"What constitutes good cause cannot be laid down by any hard and fast rules. The term 'good cause' is a relative one and is dependent upon the party seeking extension of time to provide the relevant material in order to move the Court to exercise its discretion"

It follows therefore that, what constitutes good cause depends on the circumstance of each case. However, from decided cases, there are factors providing guidance on whether or not the applicant has shown good cause.



Amongst the factors to be taken into account were succinctly stated in the cited case of **Benjamin Amon v. Republic** (supra) also in the case **Lyamuya Construction Company Limited v. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 (Unreported).

In the instant application the applicant admits that he was supplied with copies of the judgment and proceedings on 24.5.2022. Hence, he was required to lodge the appeal within 45 days from the date he was supplied with the necessary documents.

Counting from the day the applicant was supplied with the judgment and proceedings to the date he lodged the instant application on 19/5/2023 its about 360 days had lapsed.

The applicant maintained that he was not able to lodge the appeal because he could not communicate with his advocate especially in payments.

Rightly as submitted by Ms. Malima, the applicant should have accounted for each day of the delay. The need to account for the period of delay has been emphasized in numerous decisions including the case of **Dar es Salaam City Council v. Jayantilal P. Rajani**, Civil Application No. 27 of 1987; **Kalunga & Company Advocates Ltd v.**



National Bank of Commerce Ltd [2006] TLR 235, **Elia Anderson v. Republic**, Criminal Application No. 2 of 2013 and **Attorney General v. Tanzania Ports Authority & Another**, Civil Application No. 87 of 2016 to mention but a few.

In the instant application the affidavit is wanting in some important information, such as to when did the applicant initiated communication with his advocate. Considering there was no affidavit filed by the advocate to confirm this fact.

Similarly, the applicant should have stated in his affidavit as to when he was able to secure the assistance leading to the filing of the instant application. The information was necessary to enable the court gauge the extent of the delay.

In the absence of such information, the court finds that the delay of 360 days was inordinate. Owing to those reasons, it is clear that the applicant was negligent and did not show any diligence in the effort to file his appeal within time.

Another factor which this court would have considered in granting this application is whether there was sufficient reason such as the illegality of the decision sought to be challenged. In the affidavit in support of the application, the applicant did not raise any point of illegality on the impugned decision of the trial court.



Hence, all four principles which are to be considered by this court in granting the extension of time to file the appeal out of time were not catered by the applicant to warrant this court exercise its discretion to grant the application.

Consequently, I find the applicant has not advanced any sufficient reason for the court to exercise its discretion for extension of time. Subsequently, the application is dismissed.

It is so ordered.

Dated at Babati this 11th July 2023.



G. N. BARTHY,

JUDGE