

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE SUB-REGISTRY OF SONGEA**

AT SONGEA

MISC. CRIMINAL APPLICATION NO. 8 OF 2023

JOYCE GEORGE MAPUNDA APPLICANT

VERSUS

THE REPUBLIC RESPONDENT

**(Arising from the decision of the District Court of Nyasa
at Nyasa in Criminal Case No. 38 of 2022)**

RULING

4th and 9th August, 2023

KISANYA, J.:

This is an application for extension of time within which to file a notice of intention to appeal and a petition of appeal. Supporting the application is an affidavit sworn by the applicant, Joyce George Mapunda. The chamber summons and affidavit shows that the applicant intends to challenge the decision of the District Court of Nyasa at Nyasa in Criminal Case No. 38 of 2022 in which she was convicted of the offence of stealing and was sentenced to serve five years jail term. The respondent, filed a counter-affidavit in opposition of this application.

On the date of hearing, the applicant appeared in person without representation, while Mr. Madundo Mhina, learned State Attorney represented the respondent.

The applicant prayed to adopt her affidavit in support of this application as part of her submission. She urged this Court to grant extension of time basing on the grounds deposed in her affidavit. The applicant elaborated that she was convicted on 22nd September, 2022.

Mr. Mhina submitted that an application for extension of time is granted where the court is satisfied that there is good cause, as provided for under section 361(2) of the Criminal Procedure Act, Cap. 20, R.E. 2022 (the CPA). He went on submitting that although this Court has discretion to grant extension of time, the said discretion must be exercised judiciously as held in the case of **Shija Marco vs R**, Criminal Appeal No. 246 of 2018 (unreported).

As far as the case at hand is concerned, Mr. Mhina submitted that the applicant had failed to state the date of impugned decision and produce evidence to support the ground that she was suffering from epilepsy. It was also his contention that the applicant had not accounted for each day

of delay. Referring the Court to the case of **Airtel Tanzania Limited vs Ministerial Electrical Installation Co. Limited and Another**, Civil Appeal No. 37/01 of 2020, the learned State Attorney submitted that the application lacks merit.

In her brief rejoinder, the applicant reiterated her prayer for the application to be granted. She submitted that the ground of sickness which was stated in her affidavit.

From the parties' submissions, the sole issue to be resolved is whether the applicant has shown good cause warranting extension of time sought.

As rightly submitted by Mr. Mhina, this matter is governed by section 361(2) of the CPA. The court exercises its discretionary power to extend time for the giving a notice of appeal and/or filing a petition of appeal where good cause is established. What amounts to good cause is defined or listed by the law. It is therefore determined basing on the circumstances of each case. There are factors which are considered in determining whether or not good cause has been shown. The said factors have been established by case law and include, the length of the delay involved; the

reasons for the delay; the degree of prejudice, if any; and whether there is a point of law of sufficient importance such as the illegality of the decision sought to be challenged. See for instance, the cases of **Airtel Tanzania Limited** (*supra*), **Shija Marko** (*supra*), **Lyamuya Construction Company Limited vs. Board of Registered Trustees of Young Women Christian Association of Tanzania**, Civil Application No. 2 of 2010 (unreported); and **William Ndingu @ Ngoso vs. Republic**, Criminal Appeal No. 3 of 2014 (unreported).

In the instant matter, it is true that the date of impugned judgment was not disclosed in the supporting affidavit. However, the court record shows that the judgment subject to this application was delivered on 22nd September, 2022. Section 361(1) of the CPA requires the notice of intention to appeal and the petition of appeal to be given and filed within ten days and forty five days, respectively, from the date of impugned decision. This implies that the applicant was required to give her notice of intention to appeal on or before 2nd October, 2022. However, it was on 28th July, 2023 when she lodged the present application.

According to the supporting affidavit, the main reason for the delay is that the applicant is suffering from epilepsy which has affected her mental

capacity of making a perfect decision on right time. She deposed as hereunder:

3. THAT, I am an epileptic patient falling down severally, several times within prison cells.

4. THAT, I involuntarily denied to appeal on time because of the consequence of being attacked by epilepsy, thus affecting my mental capacity of making perfect decision on right time.

Mr. Mhina contended that there is no proof in supporting of sickness. However, the applicant appended a certification which was issued on 25th July, 2023 by the mental health expert of Mbinga Town Council, one Maximo Magahema. The said expert certified, among others, that the applicant was suffering from epilepsy even before the date of judgment. On that account, I am satisfied that the ground was sickness was duly proved.

It is settled law in jurisdiction that sickness is beyond human control and thus, a good cause for extension of time. I am bolstered by the decision of the Court of Appeal in the case of **Emmanuel R Maira vs The District Executive Director Bunda District Council** (Civil Application No 66 of 2010) 2010 TZCA 87 (13 August 2010) where it was held that:

"Health matters, in most cases, are not the choice of a human being; cannot be shelved and nor can anyone be held to blame when they strike. Applicant's failure to file the Notice of Appeal between the handing down of the decision (27/8/2002) and March, 2003, has a good cause behind:"

Being guided by the above position, I am convinced the applicant has established good cause for the delay in terms of section 361(2) of the CPA. Further to this, nothing to suggest that the respondent will be affected if the application is granted.

In view thereof, extension of time is granted for the applicant to give her notice of intention to appeal and file the petition of appeal within ten (10) days and forty five (45) days respectively, from the date of this ruling.

It is so ordered.

DATED at **SONGEA** this 9th day of August, 2023.



S.E. KISANYA
JUDGE
09/08/2023

Ruling delivered through virtual court system this 9th day of August, 2023 in the presence of the applicant and Mr. Madundo Mhina, learned State Attorney for the respondent.



S.E. KISANYA
JUDGE
09/08/2023