

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE SUB- REGISTRY OF MANYARA

AT BABATI

CRIMINAL APPLICATION No. 19 OF 2023

(Arising from conviction and sentence in Criminal Case No. 54 of 2022 Babati District
Court, Hon. V. Kimario-SRM 19/10/2022)

LEONCE JACKSON.....APPLICANT

VERSUS

REPUBLICRESPONDENT

RULING

10/7/2023 & 7/8/2023

BATHY, J

The above-named applicant was arraigned before the District Court of Babati (trial court) charged with one count of rape contrary to sections 130 (1), (2)(e) and 131(3) of the Penal Code [CAP 16 RE 2022]. It was alleged before the trial court that on 14/3/2022 at Qash area within Babati District, the applicant had carnal knowledge with a girl aged 8 years.

It is on record that, after a full trial, the applicant was convicted and sentenced to life imprisonment. The applicant intended to challenge the impugned decision, but unable to do so timely.



Hence, he preferred the instant application under section 361 (1) (2) of the Criminal Procedure Act [CAP 20 RE 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 unrepresented, while the respondent was represented by Ms. Mangweha, learned state attorney. The application was disposed by oral submissions.

In the submission in support of the application, the applicant urged the court to grant the prayers sought. He argued that, he was in prison and had no time to make a follow up.

On reply submission made by Ms. Mangweha, she adopted the counter affidavit and further submitted that, in the affidavit in support of



the application the applicant had deposed that, after being supplied with the certified copies of judgment and proceedings, he engaged an advocate from Arusha to prepare and file his petition of appeal.

However, there was the communication barrier and the applicant later on he came to learn that the advocate did not file the appeal.

Ms. Mangweha contended that, the applicant was supplied with certified copies of judgment and proceedings on 22/11/2022, but the instant application was filed on 19/5/2023 which is about five months later. She argued that the applicant was negligent to have not made a follow up as the period of five months is an inordinate delay.

She further contended that, the application at hand has been preferred under section 361(1) (2) of the CPA which empowers the court to grant an extension of time upon sufficient cause shown. She referred to the case of **Benjamin Amon v. Republic**, Criminal Application No. 106 of 2018, Court of Appeal of Tanzania at Dar es Salaam (unreported) where the court advanced four factors for consideration before the court can exercise its discretion to grant the extension of time as follows;

- i) The applicant must account for 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.*
- iv) *If the court feels that there are other sufficient reasons such as the existence of the point of law of sufficient importance such as illegality of the decision sought to be challenged.*

Ms. Mangweha was firm that, the present application was filed five months in dela, since the impugned decision was made, but not the affidavit nor the applicant's submission could disclose sufficient reason for his delay.

She pointed out that, even a single day has to be accounted for. To fortify her arguments, she referred to the case of **Benjamin Amon v. Republic** (supra) and **Bashiri Hassan v. Latifa L. Mashayo**, Civil Application No. 3 of 20027 (unreported). She thus urged the court to dismiss the application.

On rejoinder submission the applicant reiterated his prayer that the court should grant him an extension of time as prayed.

Having heard the parties' rival submission, the sole issue for my determination is whether the applicant has advanced sufficient reason for the court to grant him an extension of time.



This 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 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 said period, the remedy is to apply for extension of time under section 361 (2) of the CPA which provides;

*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 provision of the law cited above does not state what constitutes good cause. Also, 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”

There is no clear definition of what constitutes good cause as it depends on the circumstance of each case. However, from decided cases, there are factors which provide guidance in determining as to whether or not the applicant has shown good cause. In the case of **Benjamin Amon v. Republic** (supra) cited by Ms. Mangweha, the Court of Appeal expounded some factors to be taken into consideration in determining whether the applicant has advanced sufficient cause.

See also the case of **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 impugned decision was delivered on 19/10/2022. As admitted by the applicant in his affidavit that he was supplied with the certified copies of proceedings and judgment on 12/12/2022. Hence, he was required to lodge his appeal within 45 days from the date he was supplied with copies of the judgment and proceedings, that is, on or before 25/1/2023.



This application was filed in court on 11/5/2023 after the lapse of more than three months counting from the last day the appeal was required to be filed.

The period of more than three months an inordinate delay. The applicant was required to account on each day of delay, going through the affidavit in support of the application, the applicant has not discharged that burden.

There was argument by the applicant that he engaged the advocate to prepare his appeal, but due to lack of communication especially on payments the appeal was not lodged. The applicant should have stated as to when he engaged the advocate and when he realized that the appeal was not lodged.

The need to account each of the delay was emphasized in the case of **Bushiri Hassan v. Latifa Lukio Mashayo**, (supra) where the Court of Court of Appeal emphasized that: -

"...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." [Emphasis added].



In the instant application the applicant blames his advocate namely Mahagi for the failure to lodge the appellant's appeal. However, there is no affidavit from the said advocate to confirm if at all he/she was ever engaged by the applicant to prepare and file the intended appeal. As decided in the case of **Lilia Sifael v. Cocacola Kwanza Limited**, High Court (Labour Revision 8 of 2019) [2020] TZHC 1878 while quoting with approval the case **of Tanzania Milling C. Ltd v. Zacharia Am ani t/a All Gold Co. & Another**, Civil Application No. 415 of 2018 (unreported) where the Court of Appeal held that;

"If an affidavit mentions another person, then that other person has to swear an affidavit. However, the information of that other person is material evidence because without the other affidavit it would be hearsay."

It is the principle that, the mistake or negligence of an advocate is not an excuse. This position of the law was amplified by the court of Appeal in the case of **Tanzania Rent A Car Limited v. Peter Kimuhu** Civil Reference No. 28 of 2019 (unreported) in which the Court stated that;

...that failure by the advocate to act within the dictates of the law does not constitute a good cause for enlargement



*of the time - see also Exim Bank (Tanzania) Limited
(supra).*

Consequently, I find the applicant has not advanced any sufficient reason for the court to exercise its discretion for extension of time. It is for that reason I proceed to dismiss this application for lack of merits. It is so ordered.

Dated at Babati this 7th August 2023.



**G. N. BARTHY,
JUDGE**