

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

SONGEA SUB - REGISTRY

AT SONGEA

MISC. CRIMINAL APPLICATION NO. 16 OF 2023

(Originating from Criminal Case No. 08 of 2022 in the District Court Tunduru)

MOHAMED OMARY MTUMA APPLICANT

VERSUS

THE REPUBLIC RESPONDENT

RULING

Date of last Order: 12/10/2023

Date of Ruling: 20/10/2023

U. E. Madeha, J

In particular, this is an application for extension of time within which to file a notice of intention to appeal and a petition of appeal. It is important to note that, the application is made by way of chamber summons under section 361 (2) of the *Criminal Procedure Act* (Cap. 20, R. E. 2022) whereby it is supported by an affidavit sworn by the applicant.

As depicted in the affidavit, the applicant intends to challenge the decision made by Tunduru District Court in Criminal Case No. 08 of 2022 in which he was convicted for the offence of unlawful possession of the Government Trophies contrary to section 84 (1) and (2) (b) of the *Wildlife Conservation Act* No. 5 of 2009 read together with Paragraph 14 of the Second Schedule thereto and section 57(1) and 60 (2) both of the *Economic Crime Contral Act* (Cap. 200, R. E. 2022). The applicant was found guilty, convicted and sentenced to serve twenty (20) years in jail. According to paragraphs 4 and 5 of the applicant's affidavit the only reason that made the applicant to delay to file his notice of intention to appeal and petition of appeal is sickness. In fact, the respondent never filed counter affidavit in this application although at the hearing Mr. Gaston Mapunda, the learned State's Attorney appeared for the respondent and the applicant was represented by none other than Mr. Optatus Japhet the learned advocate.

As stated earlier herein above, the reason advanced by the applicant for the delay to file his notice of intention to appeal and petition of appeal on time is sickness. Mr. Japhet Optatus argued that the applicant had health problem whereby he attended at Tunduru Prison Dispensary where

he obtained his treatment on the first (1st) day of July, 2023. Similarly, he went on submitting that the applicant was given medicine where he regularly attended at the dispensary until on the 8th day of September, 2023. Particularly, he tendered the Certificate from Tunduru Prison Dispensary as part of his submission. In that regard, the applicant invited this Court to be persuaded by the decision made in the case of **Kioo Ltd. v. Felix Burchard Karunda**, Misc. Labour Application No. 12 of the 2021 (unreported), in which the Court stated that illness or sickness is one of the reasons for the Court to grant an order for extension of time. To cement it, he also referred to the case **Issa Badra v. Omary Kilenda and Another**, Civil Application No. 164 of 2016, in which the Court of Appeal of Tanzania stated that among the reason for the Court to grant extension of time is the length of delay the reasons for the delay. So, the degree of prejudice to the respondent and the chances of the appeal to succeed.

Furthermore, he argued that the reason advanced by the applicant is sickness. So, the last day he had attended the dispensary was on the 8th day of September, 2023. Hence, from that date to 11th September, 2023, when he filed this application he was looking for an advocate to assist him

to pursue his appeal. Thus, he prayed for the prayers set forth in this application to be granted.

At the outset Mr. Mapunda did not object the application. In support of the application the learned State's Attorney stressed that; the applicant's learned advocate has genuine reason for this Court to use its discretion power to grant extension of time for the applicant to pursue his appeal before this Court. Moreover, he added that the conditions set by the Court of Appeal of Tanzania in 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) has been met.

Similarly, from the parties' submissions, the only issue to be determined is whether the applicant has shown good cause warranting extension of time sought. It is worth considering the fact that, the power to grant for an order for extension of time is derived from the provision of section 361 (2) of the *Criminal Procedure Act* (supra). Also, the Court can exercise its discretionary power to extend time where good cause is established. There are factors which have been established by case law which are considered in determining whether or not good cause has been

shown. Notably, those factors 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. To add salt to it, refer to the decision in the case of **Lyamuya Construction Company Limited vs. Board of Registered Trustees of Young Women Christian Association of Tanzania**(supra) and **William Ndingu @ Ngoso vs. Republic**, Criminal Appeal No. 3 of 2014 (unreported).

In the instant matter at hand, the reason advanced by the applicant is sickness. On the same note it is true that, the applicant was attending at Tunduru Prison Dispensary immediately after the delivery of the judgment of the Trial Court. To prove this, certificate from the prison authority has also been part of his application to prove that he was attending and getting treatment at the Prison's Dispensary. To crown it all, in **Mathias Paul Mtasa v. Ruth Mhoji and Two Others**, Misc. Civil Application No. 101/2020 (High Court of Tanzania at Mwanza) (unreported), it was held that: -

"It has been held in numerous decisions that where sickness is pleaded, the same can serve as a ground

for setting aside a dismissal or ex-parte decision or even granting extension of time”.

Also, the Court of Appeal of Tanzania in the case of **Emmanuel R. Maira vs The District Executive Director Bunda District Council** (Civil Application 66 of 2010) [2010] TZCA 87 (13 August 2010: TanzLII), stated 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”.

Therefore, being guided by the above position, I am convinced that the applicant has established good cause for the delay in terms of section 361 (2) of the *Criminal Procedure Act* (supra). In addition to this, there is nothing to suggest that the respondent will be affected if the application is granted.

In view of the above, extension of time is granted. So, the applicant is hereby given ten (10) days from the date of this ruling to file his notice of intention to appeal and the petition of appeal. It is so ordered.

DATED and DELIVERED at **SONGEA** this **20th** day of **October, 2023**.




U. E. MADEHA

JUDGE

20/10/2023

COURT: Ruling is read over in the presence of the Applicant and the Respondent. Right of appeal is explained.




U. E. MADEHA

JUDGE

20/10/2023