

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

AT SONGEA

MISC CRIMINAL APPLICATION NO. 19 OF 2023

(Originating from Criminal Case No. 21/2023 in the District Court of Nyasa at Nyasa)

MENANCE MATEMBOAPPLICANT

VERSUS

THE REPUBLIC..... RESPONDENT

R U L I N G

Dated: 16th & 17th November, 2023

KARAYEMAHA, J.

In terms of section 361(2) of the Criminal Procedure Act [Cap. 20 R.E.2022] (the CPA), Menance Matembo has moved this court by filing an application seeking for extension of time for lodging an appeal out of time. The prospective appeal intends to challenge the decision of the District Court of Nyasa at Nyasa (the trial Court). In support of the application, an affidavit of the applicant was appended.

Earlier on 19th April, 2023 the trial court in Criminal Case No. 21 of 2023 convicted the applicant on his own plea of guilty for the charge of breaking into a building with intent to commit an offence and sentenced him to serve six (6) years imprisonment. This decision did not sit well with the applicant who desired to institute an appeal to assail it but was late to take an action. Hence this application for extension of time.

In this application the applicant appeared in person unrepresented, whereas Mr. Madundo Mhina & Alfred Maige, learned State Attorneys represented the respondent/ Republic.

Expectedly, the applicant being a lay person, was very brief. He simply stated that he was late to appeal because he was injured in the process of being arrested. Hence, he could not appeal in time. This of course is a statement from the bar because it does not trace its origin in the affidavit.

The respondent did not relent. Its counsel maintained after adopting the counter affidavit that the assertion raised under paragraph 3 of the affidavit that there are technical errors was baseless. He argued that if they existed, the applicant was to point them out not leaving this court to find them. To underscore his position, the learned counsel cited the case of **Fatma Hussein Shariff v Alikhan Abdallah (as administrator of the Estate of Sauda Abdallah) & others**, Civil Application No. 536/17 of 2017.

Mr. Maige argued further that the argument that the applicant delayed to file his appeal because he is a layman entangled in the prison is baseless. He contended that being a layman is not a reason for the

extension of time. The learned State Attorney maintained that the applicant is not excused for not knowing the law.

On yet another reason that the applicant was being transferred from one prison to another, Mr. Maige argued that the applicant did not reveal where he was transferred from and when. He added that the applicant was supposed to attach the affidavit from the officer in charge of the prison he was transferred from or taken to. He invited this court to visit the case of **Diana Rose Spare parts Ltd v Commissioner General TRA**, Civil Application No. 245/20 of 2021 at page 9 and the case of **Airtel Tanzania Limited v. Misterlight Electrical Installation Co. Limited & another**, Civil Application No. 37/01 of 2020.

On the issue of sickness, Mr. Maige submitted that the applicant was unable to prove it by either attaching the medical chit. To reinforce his view, the learned counsel cited the case of **Farida F. Mbarak & another v Domina Kagaruki & 4 others**, Civil Reference No. 14 of 2019 at page 19.

Lastly, he attacked the application that it did not account for a delay of each day, that is, from 20/4/2023 up to 5/10/2023. He submitted that failure to account for a delay of each day is fatal to the

application. On this position he cited the case of **Airtel Tanzania Limited** (supra) at page 11.

Replying on the argument that the applicant was injured in the process of being arrested which caused him to delay to lodge an appeal, Mr. Maige held the view guided by the decision in the case of **Farida F. Mbarak** (supra) at page 19 that it was a new argument which has no bearing in the affidavit.

In this application, basically three grounds were stated in the applicant's affidavit as reproduced with grammatical challenges as follows:

- 1. That my application has overwhelming chances of success due to lot of irregularities which has occasioned more rights to me applicant in the proceedings of this case.*
- 2. That the delay of filing this appeal in time was not my fault because I am a layman who is under custody as a prisoner who depend much on prison authority.*
- 3. That, I was transferred from one prison to other prison whereby after the arrival I was seriously sick and this made me not to prepare my appeal within time.*

As submitted by the learned State Attorney, I too see no cogent reasons given and proved to be termed as good cause in terms of the requirement guiding grant of extension of time. In applying for extension of time the applicant must meet conditions broadcasted by the

Court of Appeal of Tanzania in **Lyamuya Construction Company Limited vs. Board of Trustees of Young Womens' Christian Association of Tanzania**, Civil Application No. 2 of 2010 (unreported) that the court can only grant an application for extension of time subject to the applicant meeting the following conditions. These are:

- "(a) The applicant must account for all the period of delay.*
- (b) The delay should not be inordinate.*
- (c) The applicant must show diligence and not apathy, negligence or sloppiness in the prosecution of the action he intends to take.*
- (d) If the Court feels that there are other sufficient reasons; such as the existence of a point of law of sufficient importance; such as illegality of the decision sought to be challenged."*

None of the guidelines stated hereinabove were justified by the grounds given by the applicant neither in the affidavit nor in the submission. Even the said averments in the affidavit under paragraphs 3, 4 and 5 do not suffice to be taken as good cause to grant the applicant an extension of time to file an appeal out of time. Observing with Mr. Maige, the applicant has uttered mere words without proof.

It is now a trite law in our jurisdiction that in case of delay the applicant has to account for each of the delayed days. This principle was propounded in the case of **Mohamed Athumani v Republic**, Criminal Application No. 13 of 2015; **John Lazaro v Republic**, Criminal

Application No. 34/4 of 2017 and **Airtel Tanzania Limited v. Misterlight Electrical Installation Co. Limited & another**, Civil Application No. 37/01 of 2020 (all unreported).

In the absence of the explanation why the applicant failed to file his appeal for the last five months and 15 days, that is, from 20/4/2023 up to 5/10/2023, there cannot be any better explanation other than holding that there has been negligence and sloppiness on the part of the applicant which disentitles him from benefiting from the discretion of this court conferred to it by the law. In the similar vein this court is unable to agree that the applicant was sick or being in prison incapacitated him from filing his appeal for all that period.

For the reasons of the applicant's failure to show good cause or even prove his assertions, I am constrained not to exercise my discretion to grant extension of time to file an appeal out of time. Consequently, I find the application devoid of merit and hereby dismiss it.

It is so ordered.

DATED at **SONGEA** this 17th day of November, 2023



A handwritten signature in black ink, appearing to be "J. M. Karayemaha", written over a horizontal line.

J. M. KARAYEMAHA
JUDGE