

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
MANYARA SUB-REGISTRY
AT BABATI**

MISC. CRIMINAL APPLICATION No. 46 OF 2023

(Originating from Economic Case No. 7 of 2022 of Babati District Court)

BAKARI IDD SALUM.....APPLICANT

VERSUS

THE REPUBLICRESPONDENT

RULING

18th & 25th March, 2024

D. C. KAMUZORA, J.

This is an application for extension of time brought under section 361(1)(2) of the Criminal Procedure Act [CAP 20 RE 2022], (the CPA). The application is supported by an affidavit affirmed by the Applicant himself. The Respondent filed a counter affidavit to contest the application. On the date scheduled for hearing of application, the Applicant appeared in person while the Respondent was represented by Ms. Leah Vyosena, learned State Attorney.

When called to argue his application, the Applicant simply adopted the affidavit in support of application as part of his submission and had nothing of substance to argue. From the Applicant's affidavit, two reasons

for delay in filing the appeal were advanced. The first reason is that, there was a delay in supplying copies of lower court's proceedings and judgement. He claimed that the decision was made by the trial court on 29th August, 2022 and the Applicant filed a notice of intention to appeal but he was supplied with necessary copies on 10th November, 2022. The second reason is that he was unable to get assistance from the prison officers or relatives for him to file an appeal on time. He claimed that he depended much on the prison officers to assist him in preparing necessary documents for filing in court but he was unable to get help on time. That, when he got help, he decided to file this application seeking for this court to extend time for him to appeal. The Applicant urged this court to allow the application and extend time for him to file an appeal before this court.

In reply, Ms. Leah, learned State Attorney challenged the application. She submitted that the Applicant has not advanced sufficient reasons for the court to grant an application for extension of time. She argued that in terms of section 363 of the CPA a prisoner can file an appeal with the help of the prison officer thus, the claim by the Applicant that he delayed because he is in prison, cannot be a good reason for him not to file the appeal on time.

The learned State Attorney argued further that, there is no proof that the prison officers failed to assist the Applicant in filing an appeal as

there is no affidavit from prison officer to support such allegation. The learned State Attorney referred to the case of **Bernard Bigambo Vs. Republic** Misc. Criminal Application No. 2 of 2022 (unreported) to support the argument that ignorance of law is not an excuse for failure to lodge an application or appeal on time. She added that in his affidavit, the Applicant admitted to have received the copies of judgment on 10/11/2022 but this application was filed after the year. To her, the delay is too long and the Applicant is bound to account each day of the delay. To buttress her arguments, the learned State Attorney referred the case of **Benjamin Amon Vs. Republic**, Criminal Application No. 106 of 2018, Court of Appeal of Tanzania [2020 TZCA 335] to which the Court underscored the point that delay of even a single day has to be accounted unless there will be no need of having limitation period.

The learned state attorney therefore urged the court to dismiss the application as the Applicant has failed to advance sufficient reason for extension of time.

In a brief rejoinder, the Applicant readily conceded to the fact that there was a delay of a year in filing the instant application but he urged this court to consider the reason advanced in his affidavit and grant the application.

Having gone through the parties' rival submissions, the sole issue for my determination is whether the application has merits. This court has powers to grant extension of time to lodge an appeal under section 361 (2) of the CPA cited by the Applicant. 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].*

Based on the above provision, it is clear that, in order to succeed in an application for extension of time like the present one, the Applicant must demonstrate good cause. Although the provision of the law referred above does not define what constitutes good cause, there is a plethora of authorities describing what constitutes good cause. See, the cases of **Benedict Mumello Vs. Bank of Tanzania** [2006] 1 EA 227, **Tanga Cement Company Limited Vs. Jumanne D. Masangwa & another**, Civil Application No. 6 of 2001 (unreported), **Lyamuya Construction Company Limited Vs. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 (Unreported) and the case of **Benjamin Amon Vs. R** (supra) cited by the learned State Attorney. In the latter case, the Court of Appeal reiterated its prior set factors for consideration on whether good cause has been shown;

- i. The Applicant must account for each day of the delay.*
- ii. The delay must not be inordinate.*
- iii. The Applicant must show diligence and not apathy, negligence or sloppiness of action that he intends to take.*
- iv. If the court feels that there are other sufficient reasons such as existence of point of law of sufficient importance, such as illegality of the decision sought to be challenged.*

In the instant application, the test will be on the above factors to see if the Applicant was able to show sufficient cause for him to deserve court's consideration. The Applicant admitted in his affidavit and submission that he was supplied with certified copies of judgment and proceedings on 10/11/2022. Section 361 (1) and (2) of the CPA requires a party who is aggrieved by the trial court's decision to lodge a notice of intention to appeal within 10 days and an appeal to this court within 45 days from the date of the finding, sentence or order challenged. Apart from deponing in his affidavit in support of application that he filed a notice of intention to appeal, the Applicant did not attach such notice to his application thus, there is no proof if the Applicant lodged a notice of intention to appeal within the prescribed time. In considering the above provision, the Applicant was required to lodge an appeal against the impugned decision on or before 25/12/2022. He however lodged this

application on 11/10/2023 after expiry of almost 11 months from the date of the decision.

The reason advanced by the Applicant that he was waiting for assistance from prison officer to file an appeal does not hold water. I understand that the Applicant is a lay person but the lower court records shows that he was represented by Advocate Joseph Masanja until when the judgment was delivered. It was therefore expected for him to have received assistance from his advocate in lodging a notice of intention to appeal within 10 days as required by section 361(1) of the CPA and an appeal within 45 days as required by subsection (2) of the same section 361.

Even if we assume that the advocate was not ready to represent him on appeal, the Applicant was unable to demonstrate any action taken by him after the decision was made. As well captured above, even the notice on intention to appeal was not attached to this application thus, we cannot know if it was filed, and, on time. His claim that he did not know what to do cannot be an excuse for the delay of almost 11 months. As rightly argued by the learned State Attorney, ignorance of law and procedure is not a sufficient reason for extension of time. See, the decisions in **Metal Products Ltd Vs. Minister for Lands & Director of Land Services** [1989] T.L.R. 5 **Ali Vuai Ali Vs. Suwedi Mzee**

Suwedi, Civil Application No. 1 of 2006, **Ngao Godwin Losero Vs. Julius Mwarabu**, Civil Application No. 10 of 2015, **Charles Machota Sarungi Vs. Republic**, Criminal appeal No. 3 of 2011 and **Wambura N. J. Waryuba Vs. The Principal Secretary Ministry of Finance & Another**, Civil Application No. 225/01/2019 (all unreported) to mention but few. In the case of **Ngao Godwin Losero** (supra), it was held:

"... I will right away reject the explanation of ignorance of the legal procedure given by the Applicant to account for the delay. As has been held times out of number, ignorance of law has never featured as a good cause for extension of time..."

Equally the claim by the Applicant in this case that he did not know what to do and that he was waiting for assistance from prison officer cannot stand to cover the delay of almost eleven months. I agree with the learned State Attorney that such a delay was inordinate and the Applicant was required to strictly account for each day of the delay.

Going through the Applicant's affidavit, the same is conspicuous silent on what transpired on each day apart from the mere account that the Applicant was waiting for the assistance to file an appeal. The need to account for the period of delay has been emphasized in numerous decisions, see, **Dar es Salaam City Council Vs. Jayantilal P. Rajani**, Civil Application No. 27 of 1987; **Kalunga & Company Advocates Ltd**

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

In considering the circumstances of this case, this court finds that the delay was inordinate and the Applicant was unable to discharge the burden of accounting the delay of almost 11 months. The Applicant was also unable to show if he diligently made follow up of his case. It seems that after the decision was made, the Applicant was satisfied and decided not to take action until when he had a second thought. Since the Applicant was unable to demonstrate the action taken after the decision was made, this court finds that he acted negligently and sloppy in taking action to pursue his right and such negligence and sloppiness cannot be endured by granting him extension of time. This court therefore finds the application meritless and proceed to dismiss it.

DATED at **BABATI** this 25th March, 2024.



A handwritten signature in blue ink, appearing to read 'D. C. Kamuzora'.

D. C. KAMUZORA

JUDGE

25/03/2024