

IN THE HIGH COURT OF TANZANIA
SUB-REGISTRY OF GEITA
AT GEITA

MISC. CRIMINAL APPLICATION NO. HC/GTA/CRM/MCA/7585/2024

(Arising from the decision in Criminal Case No. 619 of 2023 at District Court of Chato delivered on 18 September 2023, KAGIMBO, RM)

JUMA ^{s/o} MAGOMA.....1st APPLICANT
SALMIN ^{s/o} RAMADHANI.....2nd APPLICANT
MATHIAS ^{s/o} THOMAS.....3rd APPLICANT

VERSUS

THE REPUBLIC.....RESPONDENT

R U L I N G

Date of last Order: 09/04/2024

Date of Ruling: 15/04/2024

K. D. MHINA, J.

The applicants, Juma s/o Magoma, Salmin s/o Ramadhani, and Mathias s/o Thomas, were charged and convicted on their own plea of guilty for the offences of Criminal trespass and unlawful possession of Monofilament Net within a national park.

The trial court, the District Court of Chato, sentenced them to serve 4 months imprisonment for the first count and a fine of TZS.

2,000,000/= each or in default imprisonment for the term of 3 for the second count. That was on 18 September, 2023.

Undaunted, the applicants, through the services of Right Mark Attorneys, filed an application for Revision No. 38086 of 2023 at the High Court of Mwanza prior to the establishment of the High Court of Geita.

On 4 March 2024, after it was observed that the proper way to challenge the trial Court decision was by way of appeal and not revision, the counsel for the applicants prayed to withdraw the application, and the Court withdrew it with leave to refile the appeal.

On 20 March 2024, the applicants under certificate of urgency by way of chamber summons made under section 361(1) (a), (b) & (2) of the Criminal Procedure Act Cap 20 R.E 2019 preferred this application, *inter alia* seeking for order:

- i. That, this Honorable Court be pleased to extend the time for the applicants to file an appeal out of time*

The chamber summons is supported by the affidavit sworn by Majebele Nicolaus Mayenga, the counsel for the applicants, which expounds the grounds for the application.

The grounds for the application raised in the affidavit are that first, there was a previous application for revision, which was withdrawn on 4 March 2024, and second, the illegalities in the trial court's decision based on the following;

- a. Whether it was legal and proper to convict and sentence the accused persons based on the defective charge containing the offense, which was at variance with the summary of facts or particulars of the offense.*
- b. Whether the recorded plea of guilty was perfect, unequivocal, and legal justifiably in law.*
- c. Whether it was proper for the court to rely on the pleas guilty whilst the ingredients of the offenses were never read to the applicants.*
- d. Whether the right to appeal was in law and fact fully explained to the accused persons.*

The application was heard by way of oral submission. The applicants were represented by Mr. Gaspar Mwanalyeya, learned

counsel, while the respondent/ republic was represented by Ms. Scolastica Teffe, learned state attorney.

When given the floor, Ms. Teffe straightway did not controvert the application. She briefly submitted that the respondent/ republic did not object to the application.

On his side, Mr. Mwanalyeya submitted that since the respondent did not object to the application, he prayed for this court to consider the grounds advanced in the affidavit and grant the extension of time to file an appeal against the decision of Chato District Court in Criminal Case No. 619 of 2023.

Having gone through the affidavit and the parties' submissions, though the respondent did not object to the application, it is the duty of this court to determine whether the applicant has advanced good or sufficient cause to warrant this court's grant of an extension of time.

To start with the first ground, it is not in dispute that the applicants filed the application for revision at the High Court within the time limit. That application was withdrawn on 4 March 2024 because it took the wrong recourse. Instead of filing an appeal, the applicants filed the revision.

From the above scenario, it is common ground that seeking an extension of time to re-file the struck-out or withdrawn (with leave to refile) application or appeal is not a new phenomenon in our jurisdiction, as the Court of Appeal has already stated succinctly in several cases.

In **Bharya Engineering and Construction Ltd vs. Hamoud Ahmed Nassor**, Civil Application No. 342/01 of 2017 (Tanzlii), it was held that the prosecution of an incompetent appeal, when made in good faith and without negligence, ipso facto constitutes sufficient cause for an extension of time, and the delay arising from the prosecution of that appeal was not actual; it was a mere technical delay.

In the instant application, there is no evidence of bad faith and negligence on the part of the applicants.

Therefore, the period between the institution of the revision at the High Court of Mwanza and when the same Court withdrew the application on 4 March 2024 has been justified that the same is a technical delay, that the applicants were pursuing the application, which was later found to be incompetent.

As to the period between 4 March 2024, when the previous application was withdrawn, and when this application was filed on 20 March 2024, the delay is sixteen (16) days, and the question is whether sixteen days can be considered an inordinate delay.

Again, this is not a new phenomenon in our jurisdiction, as the Court of Appeal in **Emmanuel Rurihafi and another vs. Janas Mrema**, Civil Appeal No. 314 of 2019 (Tanzlii), held that;

"The test to determine promptness is the question of fact which has to be decided on a case-by-case basis."

In that decision, the Court of Appeal found that 16 days was a reasonable time for collecting copies of the ruling and drawn order in the struck-out appeal, and preparing a meaningful application for an extension of time.

In the case of **Emmanuel Rurihafi** (Supra), the Court of Appeal quoted its other decisions with a similar issue. Those cases are;

One, **Samwell Mussa Ng'omango (as a legal representative of the Estate of the late Masumbuko Mussa) vs. A.I.C (T) Ufundi**, Civil Appeal No.26 of 2015 (unreported), where a single justice of appeal considered the circumstances of the

case and observed that the applicant acted promptly for filing an application in less than 20 days after obtaining the certificate.

Two, **Hamis Mohamed (as the Administrator of the Estate of the late Risasi Ngwale) vs. Mtumwa Moshi (as the Administrator of the Estate of the late Risasi Ngwale)**, Civil Application No. 407/17 of 2019, where also a single justice of appeal observed that a period of less than 30 days is a reasonable time.

In this matter, I think sixteen days for preparing this application for extension of time is reasonable; the applicants acted promptly, and there is no inordinate delay.

On the second ground regarding illegality, this should not detain me long because a quick glance at the grounds of illegalities raised by the applicants pointed out the important point of law that deserves the attention of this Court.

Taking into account the settled principle, as explained in numerous decisions of the Court of Appeal, including **Principal Secretary, Ministry of Defence and National Service vs. Devram Valambhia [1999] TLR 182** and **Lyamuya Construction Co. Ltd Vs. Board of Registered Trustees of Young Women's Association of Tanzania**, Civil Application No.

147 of 2006 (Unreported). In both cases the Court of Appeal held that illegality is sufficient ground to grant an extension of time.

Apart from that I am also compelled to consider the grounds of illegality raised by the applicant. In so doing, I will be guided by the widely cherished principle that whenever illegality is raised as a ground for enlarging time, it is not the duty of the Court that determine the application of extension of time to determine whether the illegality raised has merits or not. That is the duty of the Court, which would deal with and determine the appeal.

Therefore, I am persuaded by the grounds of illegality raised in this application.

Flowing from the above findings, I hold that the applicants have brought a good cause for the delay to warrant the Court exercising its discretion to enlarge the time sought. Therefore, this application is meritorious; thus, it is granted.

Consequently, the applicants shall lodge the notice of appeal within ten (10) days from the date of this order and the memorandum of appeal within 21 days from the day of filing the Notice of Appeal.

It is so ordered.



A handwritten signature in blue ink, appearing to be "K.D. Mhina". The signature is stylized and somewhat cursive.

K.D. MHINA

JUDGE

15/04/2024