

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(KIGOMA SUB-REGISTRY)

AT KIGOMA

MISCELLANEOUS CRIMINAL APPLICATION NO. 809 OF 2024

(Arising from Criminal Case No. 9 of 2023 of the District Court of Kasulu at Kasulu)

SAMSON KAGOMA APPLICANT

VERSUS

REPUBLIC RESPONDENT

RULING

Date: 29/04 & 27/05/2024

NKWABI, J.:

The applicant was convicted by the district court for grievous harm contrary to section 225 of the Penal Code. He was sentenced to an imprisonment term. He is piqued by the conviction and sentence. He wishes to appeal only that he is out of time for filing a notice of appeal. He is, under the provisions of section 361(1) (a), (b) and section 361 (2) of the Criminal Procedure Act Cap. 20 R.E. 2012 and any other enabling provisions of the law, urging this Court to grant him orders I reproduce:

1. Extension of time within which to file notice of appeal against both judgment and decree on the decision arising from Criminal Case No. 9 of 2023 before Hon. Batenzi - SRM.
2. Any other relief(s) and order(s) as the Court deems fit and just to grant.

The chamber summons is supported by affidavits of Kalimuda Venance Yugalila and Pendo Hamza Ntibalikule.

The application is factually resisted by the respondent who filed a counter affidavit which was duly sworn by Ms. Joyce Raphael Barakekenwa, learned State Attorney for the respondent.

The application was disposed of by way of oral submissions. Ms. Joyce Raphael Barakekenwa, learned State Attorney for the respondent argued against the application. Mr. Kalimunda Venance Yugalila, learned counsel for the applicant postulated in favour of the application. Both learned advocates adopted the affidavits in support and against the application as part of their submissions.

Mr. Yugalila, in submission in chief, pointed out that there are two affidavits in support of the application, one is that of Kalimunda Venance Yugalila and the other is that of Pendo Hamza Ntibalikule. He contended that the applicant was found guilty and a sentence of imprisonment was imposed on him in Criminal Case No. 9/2023 at Kasulu. He stated that when judgment was delivered on 24/11 / 2023, the applicant directed his wife to look for an advocate to act on the appeal. He also propounded that on 25/11 /2023 Pendo Hamza fell sick and thus failed to look for an

advocate. Mr. Yugalila pointed out that she has attached a medical chit and prayed the medical chit be admitted as part of the affidavit of Pendo. It was a further submission by Mr. Yugalila that Pendo got relief in December, 2023 and that it is when she looked for an advocate to pursue the appeal. The advocate found that notice of appeal would be out of time and no copy of judgment was supplied to the convict, then, this application was lodge, Mr. Yugalila explained.

In the premises, beseeched Mr. Yugalila, this Court finds that the applicant was not negligent in pursuing the appeal. He impressed upon me that justice would be done if the application is granted, and exemplified the case of **Laurent Simon Assenga v. Joseph Maboso and 2 Others**, Civil Application No. 50 of 2016 where the Court of Appeal, at page 3 of the judgment the Court of Appeal stated that a good cause is a question of fact depending on the facts of each case. He also cited the case of **Hussien Juma v. Faruq Mohamed**, Misc. Civil Application No. 26 of 2020, HC. Mr. Yugalila explained that the applicant has accounted for each day of the delay and beefed up that the applicant acted promptly after his wife health improved. He finally prayed that the application be granted.

Ms. Barakekenwa, in her reply submission, did not beat around the bush because she outrightly objected the application. She said, the grounds that have been assigned which are the wife of the applicant fell sick but there is no proof from 25/11 /2023 to 18/12 /2023 thus they have failed to account for each day of the delay, thus this application has no any merit, she stressed while referring me to the case of **Bushir hassan v. Latifa Mashayo**, Civil Application No. 3 of 2017 which stated that delay of even a single day has to be accounted for.

It was her further counter-statement that the ground that the counsel for the applicant was engaged from 19/12 /2023, while the application is for filing notice and pointed out that the attachment for proceedings and judgment is not a legal requirement. That alleged follow-up of a copy of judgment that is irrelevant, added Ms. Barakekenwa. She stressed that if there was also an application for extension to file a petition of appeal, the ground would have merit. Ms. Barakekenwa finally pleaded that the application be dismissed for want of merit.

Mr. Yugalila, in rejoinder remark, brought to the attention of the Court the affidavit of the Pendo Hamza, and said being sick is a sufficient cause. In the circumstances, she has accounted for each day of the delay underscored Mr. Yugalila and added that the case of **Latifa** (supra) is in

the favour of the applicant. He admitted, without hesitation, that it is not a requirement to have a copy of judgement for one to lodge a notice of appeal. We do prove the date of the delivery of the judgment by the copy of the judgment and proceedings, the counsel for the applicant stated. In the interest of justice, Mr. Yugalila pressed, that the copies were still necessary, though not a requirement of the law. He recapitulated that all the requirement of the law was met. He finally invited the Court to grant the application.

I have industriously observed the clashing submissions of the counsel of both parties. I have also closely examined the affidavits and the counter affidavit (the evidence) for and against this application respectively. No doubt, in determining the application, I am pressed to follow the law of the land which includes case law. The case law that quickly comes into my mind is **James Anthony Ifunda v. Hamis Alawi**, Civil Application No. 482/14 of 2019, (unreported) (CAT) where it was ruled that:

"In addition, the alleged sickness is not supported by a medical report or medical chits which could be acted upon by the Court. In the circumstances, I am satisfied that the first reason for the delay advanced by the applicant is untenable."


In this application, it an impression created to me that the applicant has complied with the requirement of the law. The respondent has not claimed that the medical chit is no authentic one, so this Court relies on it and rule that indeed the wife of the applicant fell sick and the ailment caused her to fail to follow the instructions given to her by her husband, the applicant. As seen above. Thus, the respondent has failed to discredit the applicant on the claim of sickness of his wife who he is allegedly, instructed her to pursue the appeal through an advocate, which is a legal right of the applicant.

Finally, I am of the firm view that this application is merited. Inevitably, I allow the application. Time for lodging a notice of intention to appeal is extended for seven days from the date of this ruling.

It is so ordered.

DATED at **KIGOMA** this 27th day of May, 2024.




J. F. NKWABI
JUDGE