

IN THE HIGH COURT OF TANZANIA

DODOMA SUB REGISTRY

AT DODOMA

MISC. CRIMINAL APPLICATION NO 8127 OF 2024

(Arising from the decision of Criminal Appeal No. 37470 of 2023 before Hon Khalfan, J)

CEASAL MBWANJI APPLICANT

VERSUS

MALUGWE TARIMO..... RESPONDENT

RULING

Date of last Order: 16/05/2024

Date of Ruling: 29/05/2024

LONGOPA, J.:

The applicant and respondent were parties before the Primary Court and in the District Court for Dodoma as the first appellate Court. Being dissatisfied with the decision of District Court of Dodoma, the applicant preferred an appeal before this Court vide Criminal Appeal No 37470 of 2024. The appeal was scheduled for necessary orders on 7th March 2024 when the applicant's herein applied for withdrawal of the appeal for a proper appeal to be filed. Thus, this application as the time for filing an appeal within time has lapsed in course of the preferring and prosecuting an appeal that was withdrawn.



The Chamber Summons which is made under Rule 10 of the Judicature and Application of Laws (Criminal Appeals and Revisions in Proceedings originating from Primary Courts) Rules, GN No. 390 of 2021 where the applicant sought to be heard on the following on the following:

1. That the Honourable Court be pleased to enlarge time to enable the applicant to file an appeal out of time against the decision of the District Court of Dodoma in Criminal Appeal No. 41 of 2023.
2. Any other relief the Honourable Court deems just and fit to grant.

This application is supported by an affidavit of one Ceasal Mbwanji, the applicant. In that affidavit it is averred that:

- 1. That, I was the appellant in Criminal Appeal No. 37470 of 2023 in this honourable court.*
- 2. That, the matter was scheduled for mention on 7th March 2024 before Hon Judge Fatma Khalfan.*
- 3. That on 7th March 2024, when the matter came for mention and necessary orders, to check whether all parties have filed their pleadings, the court suo motto discovered*



that the appeal was filed without stamped with district court stamp as the matter originated from Primary Court.

4. That, due to mistake done by a clerk the matter seemed as if it was directly filed to the High Court.

5. That, on 14th March 2024, the appeal was struck out on the basis that the Criminal Appeal Number 37470 of 2024 was not properly submitted before this Court. The copy of the said drawn order is hereby attached and marked as annexure PA-1 and the leave of the Court is craved for it to form part of this affidavit.

6. That, the court stamp was mistakenly forgotten when the appeal was prepared and not the delay of time.

7. That, the striking out of the Criminal Appeal No. 37470 of 2024 came out when we were pursuing our case and not because we slept on our rights.

8. That, it will be in the interest of justice that we are granted an extension of time for leave to file a notice of intention to appeal to the High Court out of time so that we may be able to challenge the decision delivered thereby on us vide the Criminal Appeal No. 41 of 2023.



On the other hand, the respondent's counter affidavit disputed all the averment in the affidavit of the applicant without any further averments. It was denial in evasive manner.

Both parties were represented whereby the applicant enjoyed legal services from Teckla Kimati, learned advocate and the respondent enjoyed legal services of Mr. Majaliwa Wiga, learned advocate. The parties appeared before me on 16/05/2024 for viva voce submission in support or opposition of the grounds of the application.

It was the applicant's submission that is in the court's discretion to extend time. This Court is invited to judiciously exercise its mandate in granting extension of time. The case of **Mbogo Vs Shah** [1968] EACA 93 was cited to emphasize that the Court states that "all relevant factors must be taken into account in exercise of discretion to extend time. These factors include length of delay, reasons for delay, whether there is arguable case in the appeal and extent of prejudice to the defendant if time is not extended."

Further, it was argued that the applicant is required to demonstrate existence of reasonable cause/ sufficient cause for the court to exercise its discretionary powers. In the case of **Shant vs Hindocha and others** [1973] E.A. 207, the Court noted that applicant must show reasons why he



should be given more time and there must be persuasive reasons that delay has not been caused by dilatory conduct on his party.

The applicant reiterated that in the instant application, the applicant has demonstrated that it was the mistake of the Registry Officer who had not stamped the District Court Stamp where the appeal was lodged thus it was assumed that the matter had been filed directly to the High Court. As a result of the absence of District Court stamp on the documents initiating the appeal, it was pertinent for the appellant/applicant herein to pray for striking out of the appeal in order that was improperly before the court.

Accordingly, the mistake/errors of not stamping the document filed in the District Court was not caused by the applicant. It was an act beyond the applicant's control. The withdrawal of the Criminal Appeal No. 37470 of 2024 before the High Court was done while the applicant was in Court trying to fend his rights prosecuting the matter. As such, applicant urged this Court to extend time to allow the applicant to ably challenge impugned decision of the District Court in Criminal Appeal No. 41 of 2023.

On the other hand, the respondent opposed the application. First, that appeal that was struck out was preferred under section 25(3) of the Magistrates Courts Act that governs appeals and revision of the High Court for decisions from the District Courts. Essentially, the section requires the

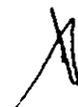


appeal to be filed in the District Court that made such decision. The applicant filed the appeal directly at the High Court which was not proper place for lodging the appeal. The words used in that provision of the law is "shall be filed in the District Court".

Second, there are no sufficient reasons for the extension of time. There is no supporting affidavit from the court clerk at the District Court to validate that alleged mistake of not stamping the document happened in the District Court. Absence of affidavit of the respective Registry Officer to support the application makes the allegation mere words without support thus there ought to be filed additional affidavit showing that the error occurred in court and not caused by the applicant.

Third, it was reiterated that there is no good reason to extend time as the applicant failed to lodge the matter at the appropriate registry i.e. the District Court Registry instead of lodging the same at the High Court registry.

Fourth, it was submitted that Rule 10 of the Judicature and Application of Laws (Criminal Appeals and Revisions in Proceedings Originating from Primary Court) Rules 2021 requires that the reasons must be set out and accompanied by the petition of appeal as the prerequisite. The failure to do so makes the application fatally defective as there cannot be an application before the Court. The respondent prayed for dismissal of the application.



Having heard the rival submissions by the parties, I have dispassionately reviewed the records to determine validity or otherwise of the application before me.

It is settled law that extension of time falls within the discretionary powers of the Court which must be exercised judiciously upon considering existence of sufficient cause. This position was demonstrated in the case of **Juma Shomari versus Kabwere Mambo**, Civil Application 330 of 2020) [2021] TZCA 63 (4 March 2021) (TANZLII), at page 3, where the Court of Appeal observed that:

*Many time, in its pronouncements, this Court had occasions to interpret this provision of the law and insisted that the applicant should show a good cause before time can be extended for doing a certain act. Few of the decisions are; **Abdallah Salanga and 63 Others v. Tanzania Harbours Authority**, Civil Reference No.08 of 2003 and **Sebastian Ndaula v. Grace Rwamafa**, Civil Application No. 4 of 2014 (both unreported). However, what constitutes good cause has not been codified although the Court has, in various instances, stated a number of factors to be considered. These are; whether or not the application has been brought promptly; a valid explanation for the delay and whether there was diligence on the part of the applicant.*



The applicant averred that being dissatisfied by the decision of the District Court in Criminal Appeal No. 41 of 2023, the applicant timely preferred an appeal against the decision. It is unfortunate that the same was struck out for non-stamping of the district court stamp.

The applicant has been busy prosecuting the appeal before the High Court in Criminal Appeal No. 37470 of 2024 that ended up being struck out. It is a law of this jurisdiction that where a party was pursuing his rights whether in appropriate or wrong forum, the efforts may be considered as good ground to extend time.

In the case of **Tanzania Rent a Car Limited vs Peter Kimuhu** (Civil Reference No. 28 of 2019) [2023] TZCA 94 (10 March 2023) (TANZLII), the Court of Appeal observed that:

Although it was rejected by the Single Justice for not constituting good cause, we are of the considered view that in the circumstance of this matter it does. The efforts which were made by the applicant above indicate that the applicant regardless of whether she took a right or wrong course of action or whether she was represented or not, she was busy in pursuit of her rights. In other words, she did not lie idle.



Having observed that the applicant was pursuing his rights in the High Court in Criminal Appeal No. 37470 of 2024, the applicant did not stay idle as he was fighting for justice in court of law.

In **Okech Boaz Othiambo & Another vs Salama Idi Kanyoroto** (Civil Application No. 900/15 of 2021) [2024] TZCA 291 (2 May 2024) (TANZLII), at pages 7-8, the Court of Appeal stated that:

With respect to the counsel for the respondent, I don't share the view that if an application is withdrawn on some legal shortcomings, that should be branded as negligence on the counsel for the applicant which is not excusable. We are not angels. We are human beings and can make mistakes. People should not be punished for mistakes which they could not be foresee unless there is evidence that the mistakes were made deliberately with the view of getting some advantage out of it. I don't see such a situation here but a technical delay. To the contrary, I see chances of disposing the properties which may render the appeal nugatory.

I shall therefore at this juncture, allow the application for enlargement of time to file the appeal. The applicant has demonstrated a good cause for this Court to grant extension of time.



The applicant is granted a total of **thirty (30) days** from the date of this ruling to appeal against the decision of the District Court of Dodoma in Criminal Appeal No. 41 of 2023.

It is so ordered.

DATED and **DELIVERED** at Dodoma this 29th day of May 2024.



Longopa

**E.E. LONGOPA
JUDGE
29/05/2024.**

X