

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

DAR ES SALAAM DISTRICT REGISTRY

AT DAR ES SALAAM

MISC. CRIMINAL APPLICATION NO. 604 OF 2024

(Arising from the Judgement of the Ilala District Court in Criminal Case No. 534 of 2022 dated 13th November 2023)

KOKUSHUBILA AHMED MBULA.....APPLICANT

VERSUS

REPUBLIC..... RESPONDENT

RULING

Date of last Order: 12th February 2024

Date of Ruling: 15th February 2024

MTEMBWA, J.:

Under ***section 361 (2) of the Criminal Procedure Act, Cap 20 RE 2022***, the Applicant is seeking for an order of extension of time within which to file an appeal to this Court out of time against the Judgement of the Ilala District Court dated 13th November 2023 in **Criminal Case No. 534 of 2022**. The same was brought under a certificate of extreme urgency and is supported by an affidavit of the Applicant and **Mr. Domitian G. Rwegoshora**, the learned counsel for the Applicant.

The facts, albeit briefly, leading to this Application can be summarized as follows; that, the Applicant was arraigned in the District Court of Ilala for the offence of Trafficking in Narcotic Drugs contrary to ***section 15A (1) and (2) (c) of the Drugs Control and Enforcement Act, Cap 95 RE 2019***, as amended by ***the Written Laws Miscellaneous Amendment Act No. 5 of 2021***.

It was alleged that on the 30th day of September 2022, at the baggage room in the Bandari area within the Ilala District of Dar es Salaam Region, the Applicant was discovered in possession of narcotic drugs, so say, cannabis sativa, commonly known as 'Bhangi' weighting approximately 1.7 kilogram. She pleaded not guilty to the Charge. Having considered the evidence adduced during hearing, the trial Court convicted her and was sentenced to serve thirty (30) years imprisonment. Still undaunted to demonstrate her innocence, the Applicant is seeking for extension of time to file an appeal out of time to challenge the conviction and sentence meted out against her.

During hearing of the Application, the Republic was represented by **Ms. Yasinta Peter**, the learned senior state attorney while the Applicant enjoyed the service of **Mr. Domitian G. Rwegoshora**, the learned counsel. Hearing proceeded orally.

Staggering the floor, Mr. Rwegoshora, while imploring this Court to adopt the affidavits supporting the Application, argued that, on 17th November 2023, that is three days after the date of pronouncement of the Judgement, the Applicant filed a Notice of intention to appeal. That upon a request, on 29th November 2023, the Applicant in addition was supplied with a copy of the Judgement for appeal purpose. He added further that the Applicant's efforts to appeal within time were caught in a web of a newly introduced electronic filing system. He argued further that the system's case bar status remained "hearing" before Hon. Nkwera, RM while the matter was already finalized. In such circumstance, appeal could not be filed until when the system's case bar status is changed to "decided", Mr. Rwegoshora added.

In order to make sure that the appeal is filed in time, on behalf of his client who was by that time in prison, Mr. Rwegoshora had to drop by Ilala District Court physically with the view to have the anomaly rectified but still that could not help the day. He then sought an intervention of the Deputy Registrar of the High Court on 8th December 2023 who advised him to wait while the matter was delt with administratively. A letter to Ilala District Court and a reminder

letter to the Honourable Deputy Registrar dated 18th December 2023 was attached to the Application. According to Mr. Rwegoshora, although the Applicant had everything in her hands and ready to file an appeal, the prescribed time which is forty-five days (45) ended while waiting for system rectification.

Mr. Rwegoshora submitted in addition that, having tiredly failed to appeal on time as aforesaid, on 5th January 2024, he came to learn that the system's case bar status was already updated to "decided" thereby allowing the Applicant to file her Appeal. As such, promptly, she was able to file this Application on 8th January 2024. However, the forty-five (45) days ended on 28th December 2023, Mr. Rwegoshora noted. He was of the view that the Applicant, in such situation, did not sleep on her right to appeal to this Court.

Mr. Rwegoshora placed reliance on ***section 361 (2) of the Criminal Procedure Act***, and added that, the Applicant has demonstrated a good cause warranting a grant of this Application. He cited the case of ***Omary Hamis Mponela Vs. Republic, Criminal Application No. 64 of 2022*** where the Court cited with approval, the case of ***Lyamuya Construction Co. Limited Vs. Board of Registered trustees of Young Women Christian association of***

Tanzania, Civil application No 2 of 2010 (unreported) where it was observed that the power to extend time is discretionary which should be judiciously exercised. He lastly beseeched this Court to grant the Application.

On her part, Ms. Peter resisted the Application and submitted further that the essence of this matter is the Criminal Case No. 534 of 2022 in the District Court of Ilala where the Applicant was sentenced to serve thirty (30) years imprisonment for trafficking in narcotic drugs contrary to ***section 15A (1) and (2) (c) of Drug Control and Enforcement Act (supra)***. Dissatisfied, the Applicant in time, filed a notice of appeal. The learned counsel proceeded to note that under section 359 of the Act, a notice of appeal should be filed within ten (10) days and file the appeal within fort-five (45) days from the day of pronouncement of the Judgement. That, unjustifiably, the Applicant failed to file the Appeal on time.

On the reason for the delay advanced, Ms. Peter argued that the Applicant has not accounted for the days of delay. Although she conceded to the salutary principles in ***Lyamuya Construction Co. Limited (supra)***, the learned counsel was of the view that the Applicant did not justify or account for each day lapsed without filing

an appeal. She doubted the attached letters justifying that there was an electronic filing system disorder, and if so, there could be a reply from the Deputy Registrar of the High Court, she opined.

Ms. Peter placed further that, although this Court has discretion to extend time within which to file an appeal notwithstanding that the period has expired, in this case, she implored this Court to find that there has been no good cause established warranting a grant of the application. Lastly, she beseeched this Court to struck out the application.

Rejoining, Mr. Rwegoshora submitted that the Applicant accounted for each day of delay that passed without filing the appeal from the day of pronouncement of the Judgement to 5th January 2024 when the electronic system case bar status was updated. He added that, the requirement that a part should account each day of delay, does not mean necessarily, that each day lapsed must be accounted. The Applicant is only required to explain what he or she was doing within a specific period of time. He insisted that the Applicant has established good cause warranting a grant of this Application.

Indeed, in the case of ***Mansoor Daya Chemicals Vs. NBC, Civil Application No. 88 of 2016, Court of Appeal of Tanzania at Dar es Salaam (unreported)***, the Court had this to say;

In an application for extension of time under Rule 10 of the Rules, an Applicant is required to show good cause why time should be extended. What is a good cause is a question of fact, and this may vary with the circumstances of each case. But it is common ground that in such an application the Applicant must show:-

- i. The length of the delay*
- ii. The reason(s) for the delay that would account for each day of delay.*
- iii. If there is an arguable case.*

Guided by the above position, it is high time that I determine the Application. Counsels for both parties at least agree to each other that in order for this Court to enlarge time, there must be "good cause" established. Conversely, the definition of the phrase "good cause" has not been explained in any rule or Act. That, it would appear, was not accidental. The respective power being purely discretionary and equitable, it cannot apply identically in all circumstances and as such the categories of good cause are never closed.

In ***Masatu Mwizarabi Vs. Tanzania Fish Processing Ltd, Civil 5 Application No. 13 of 2010(unreported)***, the Court observed that, "good cause" is a relative one and is dependent upon the party seeking extension of time to provide the relevant material for the Court to rely on.

Admittedly, case law has established some principles to be taken into account in determining existence or non-existence of good cause. For instance, in ***Tanga Cement Company Limited Vs. Jumanne D. Massanga and Amos A. Mwalwanda, Civil Application No. 6 of 2001(unreported)***, the Court observed;

What amounts to sufficient cause has not been defined. From decided cases a number of factors have to be taken into account including whether or not the application has been brought promptly; the absence of any explanation for delay, lack of diligence on the part of the applicant

Equally, Court is enjoined not to limit itself to the reasons for the delay at the time of determining the Application for extension of time. The Court should go further and consider the end result or implication of granting or not granting the Application. The application may be refused if it serves no purpose or it is an abuse of Court process. In ***Reuben Lubanga Vs. Moza Gilbert and 2 Others,***

***Civil Application No. 533 of 2021, Court of Appeal of Tanzania
at Dar es Salaam (Unreported)*** where the Court observed;

It is equally the law that, in deciding whether or not to grant an extension of time, the Court should not limit itself to the delay. Instead, it has to consider as well the weight and implications of the issues involved in the intended action and whether the same is prima facie maintainable. This is because, the order being equitable, it cannot be granted where it will serve no purpose or where it is a mere abuse of the court process.

According to Mr. Rwegoshora, the Applicant's efforts to appeal within time could not materialize due to a newly introduced electronic filing system where the electronic system's case bar status remained "hearing" while the matter was already finalized or decided. In such circumstance appeal could not be filed until when the same is updated to "decided". Fruitlessly, he had to inform the District Court of Ilala and later on, the Deputy Registrar of the High Court. He observed that, had it been not the efforts of the Deputy Registrar of the High Court, the electronic case status bar would have not been changed to "decided". Ms. Peter resisted the Application and placed for evidence that there was system malfunction or error. She doubted the letters attached to the Application.

I have passed through the attached documents to the Application and indeed, I am of the opinion that the intention to appeal was first demonstrated by filing a notice of intention to appeal. It could appear, the same was filed within three days from the day of pronouncement of the Judgment by the trial Court which Ms. Peter seems to indorse. She was then supplied with the a copy of Judgement within time only that the electronic case status bar was not changed to "decided". The appeal therefore could not have been filed electronically. I have no reasons not to believe and trust on the attached letters evidencing that the respective authorities including this Court were informed of the error.

I have in mind also that cases, once filed, are scrutinized by the learned Deputy Registrar of the High Court before admission. In that regard, she had an ample time to see the letters attached to the application. In my conviction, she found the letters to be genuine before admission. The Applicant's counsel had no reason to write letters to the Courts if everything was working properly. That would be an absurdity and uncalled for on his part. To that end, as demonstrated by the leaned counsel for the Applicant, I see that there is good cause established warranting a grant of this application.

Ms. Peter placed for evidence from the Court displaying that there was electronic filing system error. With respect, she failed to fault the authenticity of the attached letters to the Application. For future guidance however, and if I may add, to avoid being caught in a web of distrustful litigants, I think Court officers should learn to reply in writings of any electronic filing system malfunction or error observed at the material time once moved by a party for records keeping. In this case, although a letter was filed to the District Court of Ilala and to this Court, the replies thereof could not be traced. In such circumstances, the doubts, if any, are resolved in favour of the Applicant.

By way of passing however, I agree with Mr. Rwegoshora that it is not necessary that each single day of delay must be accounted for. It suffices and serves the purpose even if days of delay are accounted in groups considering the circumstance of the case. If the Court in ***Lyamuya Case*** intended that each single day be accounted for, it could have expressly stated so, and of course, that would be a tiresome job for some cases.

Having so observed, this application is granted. Time therefore is hereby extended for the Applicant to file an Appeal to this Court within fourteen (14) days from today.

I order accordingly.

Right of appeal fully explained.

DATED at DAR ES SALAAM this 15th February 2024.



A handwritten signature in blue ink, consisting of stylized initials and a surname.

**H.S. MTEMBWA
JUDGE**