

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

MISC. CRIMINAL APPLICATION NO. 24 OF 2023

(Originating from Criminal Case No. 58 of 2020 in the District Court of Mbuiu at Mbulu)

EDWARD WILLIAMAPPLICANT

VERSUS

THE REPUBLIC.....RESPONDENT

RULING

9th November 2023 & 26th January 2024

Kahyoza, J.:

On 02.02.2021 the district court convicted **Edward William** with the offence of rape and sentenced him to a mandatory statutory term of 30 years' imprisonment in first court. In the second count, the court convicted **Edward William** with the offence of causing actual bodily harm and sentenced him to serve 2 years' custodial sentence. It ordered the sentence to run concurrently.

Aggrieved, **Edward William** on date not indicated, signed a notice of appeal, which the district court received on 01.08.2022. Thus, the notice of

appeal was received after the expiry of 10 days as provided. He instituted the instant application seeking leave to appeal out of time.

Edward William, who was not represented, had nothing to submit – rather he prayed to adopt his affidavit. In his affidavit, he deposed that he did not obtain legal advice timely as he was in prison and that he lacked financial means to process his appeal timely.

On her part, the respondent's state attorney, Mr. Bizimana learned state attorney filed a counter affidavit opposing the application for extension of time. Ms. Hanifa, learned state attorney who represented the respondent at the hearing, submitted that the applicant had failed to adduce sufficient reason for delay. She argued that the fact the applicant was a prisoner was not a ground to prevent him from appealing on time, as there are many prisoners who manage to appeal on time.

She opposed vehemently the applicant's averment that he delayed to appeal because he had no financial means. She contended that appeals in criminal cases are cost free. To buttress her contention, she cited the case of **Benjamin Amon vs The Republic**, Criminal Application No. 106/11 of 2018 (CAT) (Unreported), citing in approval the decision in **Bushiri Hassan vs Latifa Lukiko Kashayo**, Civil Application No. 03 of 2017 (Unreported).

It is beyond dispute that a person, aggrieved by the decision of district court or a court of the resident magistrate excising original jurisdiction in a criminal matter, must lodge a notice of appeal within 10 days and lodge his appeal within 45 days from the date of receipt of a copy of the judgment and proceedings. Section 361(1) of **the Criminal Procedure Act** [Cap. 20 R.E. 2022] (the **CPA**) which reads as follows;

"361.-(1) Subject to subsection (2), an appeal from any finding, sentence or order referred to in section 359 shall not be entertained unless the appellant-

(a) has given notice of his intention to appeal within ten days from the date of the finding, sentence or order or, in the case of a sentence of corporal punishment only, within three days of the date of such sentence; and

(b) has lodged his petition of appeal within forty-five days from the date of the finding, sentence or order, save that in computing the period of forty-five days the time required for obtaining a copy of the proceedings, judgment or order appealed against shall be excluded."

If a person delays to appeal, the High Court may admit his appeal if he adduces good cause for delay as provided by sub-section 361(2) of the **CPA**. It reads -

"(2) The High Court may, for good cause, admit an appeal notwithstanding that the period of limitation prescribed in this section has elapsed."

There are no hard and fast rules to what can constitute good cause. In the case of **Yusufu Same & Hawa Dada vs. Hadija Yusufu**, Civil Appeal No. 1 of 2002 (CAT-DSM) (unreported), the Court of Appeal stated that-

"In application for extension of time is entirely in the discretion of the court to grant or refuse it. This discretion, however, has to be exercised Judicially and the overriding consideration is that there must be sufficient cause for so doing".

Among the factors to be considered by the Court in the course of exercising its discretion to extend time as observed in **Henry Muyaga v. Tanzania Telecommunication Company Ltd**, Civil Application No. 8 of 2011 (unreported) are-

*"In considering an application under the rule, the courts may take into consideration, such factors as, **the length of delay**, the **reason for the delay** and the degree of prejudice that the respondent may suffer if the application is granted." (Emphasis added)*

The record bears out clearly the applicant was convicted and sentenced on the 02.02.2021, on the date not disclosed he prepared and

signed the notice of appeal which was lodged on 01.08.2022. A notice of appeal was lodged after the expiry of six months. The applicant has not stated reason for such unprecedented delay.

The applicant averred that he delayed to appeal due to financial constraint. He did not provide explanation why he needed money to process a criminal appeal. As submitted by the state attorney, criminal appeals are processed free of costs. Even if there were costs involved that alone could not have been a ground to extend time. It is settled that lack of financial means is not a good cause for delaying to take legal action. **Rustomji On Limitation**, Eight Ed. 2001 at page 27 had this to say:

"After the prescribed period has elapsed, the door of justice is closed and no plea of poverty, distress, ignorance or mistake can be of any avail. The general rule is that even a hard cash should not be allowed to disturb the law. The rule must be enforced even at risk of hardship to a particular party. The Judge cannot on equitable grounds enlarge time allowed by the law, postpone its operation, or introduce exception not recognized by it. Whatever sympathy a Judge may feel for litigation and however dishonest and immoral the conduct of his opponent might have been in pleading the bar of limitation, the courts are warranted in introducing saving or exceptions which are not in the statute."

The position in **Rustomji** was taken in **Zebitisi Kawuku V. A. Karim (1938) 5 ECCA 37** and **Halima Athuman V. Hamadi Masudi** PC Cr App. No. 50/92 Masanche, J. (Unreported). It was held in the former case that-

"Ignorance of law, old age and lack of means are not good grounds for allowing an appeal out of time."

The applicant's averment that he delayed to appeal for lack of financial means is not a sufficient reason for delay.

It is settled, as submitted by the State attorney, that delay even of a single day must be accounted for. The applicant did not account for period of delay. I agree with the state Attorney that, the applicant delayed to appeal for reasons best known to himself. Consequently, I find that the applicant has adduced no good cause for delay, hence, I dismiss the application for want of merit.

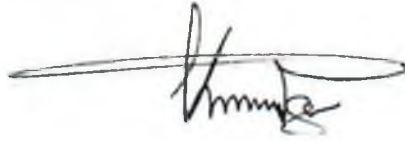
I ordered accordingly.

Dated at **Babati** this **26th** day of **January**, 2024.



John R. Kahyoza, J.

Court: Ruling delivered in the virtual presence of the appellant and Mr. Johnson Ndibalema, state attorney. The ruling was fixed for ruling on the 30th January, 2024 due to Law Day celebration. However, by parties mutual agreement, we have agreed to have delivered virtually this day. B/C Ms. Fatina haymale(RMA) present.

A handwritten signature in black ink, appearing to read 'J. R. Kahyoza', written over a horizontal line.

J. R. Kahyoza

Judge

26/01/2024

