

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

**MISC. CRIMINAL APPLICATION NO. 3257 OF 2024**

*(Originating from Criminal Case No. 114 of 2022 in the District Court of Babati at Babati)*

**RICHARD MARTIN GARA.....APPLICANT**

**VERSUS**

**THE REPUBLIC.....RESPONDENT**

**RULING**

*7<sup>th</sup> & 17<sup>th</sup> May, 2024*

***Kahyoza, J.:***

**Richard Martin Gara** was charged with the offence of rape, convicted and sentenced to thirty years imprisonment on 05/01/2023. Unfortunately, he delayed to appeal. He instituted the instant application seeking leave to appeal out of time.

**Richard Martin Gara** raised in his affidavit as grounds of delay that, he was transferred to different prisons and that in course of being transferred from one prison to the another, he misplaced his documents. Mr.Nahman Waziri Koko, the officer in charge of Babati prison filed an affidavit to support **Richard Martin Gara's** application. He deponed that soon after the applicant was admitted to in Babati District prison, he was

transferred to Mbulu District prison, Arusha Central Prison and later to Babati Prison. He added that, his prison's computer and printer were not working.

**Richard Martin Gara**, who was not represented, insisted that after he was convicted, he was transferred to Mbulu prison, later to Arusha and back to Babati prison. He added that he worked on his appeal when he was at Babati Prison.

**Ms Mwanaidi**, the learned State Attorney, vehemently opposed the application. After praying to adopt the counter affidavit, she contended that the applicant failed to adduce sufficient reasons to warrant an extension of time. The applicant's ground of delay is that he was transferred from one prison to another. She submitted that, the applicant's ground of delay is not sufficient reason for delay. She argued that the applicant was required under section 363 of **the Criminal Procedure Act**, [Cap. 20 R.E. 2022] (the **CPA**) to file the appeal through the prison officer. Long time passed before the applicant lodged the appeal or applied for extension to appeal to this Court.

In addition, she argued that the applicant failed to account for the period of delay. To support her arguments, she cited the case of **Benjamin Amon vs R.**, (Criminal Application 106 of 2018) [2020] TZCA 335 (23 April 2020)

It is settled, 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 appeal from. 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."*

It is settled, that, what amount to good cause depends upon the prevailing circumstances of each case. There are no hard and fast rules to what can constitute good cause. In **Henry Leonard Maeda and Another v. Ms. John Anael Mongi**, Civil Application No. 31 of 2013 at page 19, it was stated thus-

*"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 applicant was convicted and sentenced on 05/01/2023, lodged his notice of intention to appeal on 13/01/2023. It is on record that the district court supplied him a copy of proceedings on 15/05/2023. After the exclusion of time within which to obtain copies, 45 days lapsed on 29/06/2023 This application was filed on 12.02.2024, thus, the applicant had a duty to account for 222 days' delay. The applicant's reasons for delay was that he was transferred from one prison to another and that during the transfer, he misplaced his documents. The officer in charge of prison supported the

applicant's averment that he was transferred to Mbulu prison, to Arusha prison and later retransferred to Babati. He added that the prison's computer and printer were defective.

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 was not convinced that the applicant's reason that he delayed to appeal because of being transferred from one prison to another was a good cause for delay. It is settled that once a convict lodges his documents or appeal purposes with the officer in charge of prison, he is done. He was not required to be at Babati prison to institute his appeal. Not only, that the applicant delayed to apply for extension of time for long time.

The applicant did not convince me that he delayed for all that time because of being transferred from one prison to another or because he misplaced his documents or that the prison's computer and printer were defective. The officer in charge did not state for how long the computer and printer were defective were not working. I have no doubts that the prison's computer and printer were defective, what I do not agree is that they were defective for such a long period to cause the delay.

In **Benjamin Amon vs R.**,(supra), the Court of Appeal, held that-

*"In exercising its discretion of whether or not to grant extension of time the Court is required to consider the following factors which may not be exhaustive, but at the moment they include, that:-*

*(a) the applicant must account for all the period of delay;*

*(b) the delay should not be inordinate;*

*(c) the applicant must show diligence, and not apathy, negligence or sloppiness of the action that he intends to take; and*

*(d) if the court feels that there are other sufficient reasons, such as existence of a point of law of sufficient importance such as the illegality of the decision sought to be challenged."*

I agree with the state Attorney that, the applicant's delay in this case is inordinate and he failed to account for delay. He was negligent or he did not intend to appeal. 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.

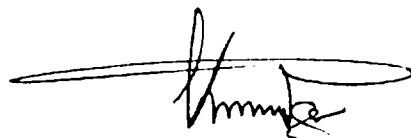
Dated at **Babati** this **17<sup>th</sup>** day of **May**, 2024.



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

**John R. Kahyoza,**  
**Judge**

**Court:** Ruling delivered virtually in presence of the applicant and Ms. Mwanaidi Chuma, the State Attorney for the Respondent. B/C Ms. Fatina Haymale(RMA) present.

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

**John R. Kahyoza,**

**Judge**

**17/05/2024**