

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

MISCELLANEOUS CRIMINAL APPLICATION NO. 44 OF 2023

(Arising from Criminal Appeal No. 27 of 2022 before Hanang District Court, Original Criminal case No. 228 of 2022 of the primary court of Hanang' District at Katesh)

PAULO KAMILI.....APPLICANT

VERSUS

JOSEPH JACOB.....RESPONDENT

RULING

7th Dec & 7th March, 2024

Kahyoza, J.:

Joseph Jacob instituted criminal proceedings against **Paulo Kamili** for an offence of malicious damage to property contrary to section 326 (1) of the Penal Code, [Cap. 16 R.E 2022] at Katesh Primary Court. **Paulo Kamili** pleaded not guilty to the charge. After full trial, the primary court convicted and sentenced **Paulo Kamili** with the offence of malicious damage to property.

Aggrieved, **Paulo Kamili** appealed to District Court of Hanang at Katesh against both conviction and sentence. Following the preliminary objection raised that the amended petition of appeal was wrongly numbered, the district court sustained the objection and dismissed the appeal instead of striking it out.

Dissatisfied with the decision of the District Court of Hanang at Katesh on Criminal Appeal No. 27 of 2022, the applicant knocked the doors of the High Court praying for an order extending time for filing appeal out of time against the decision of the District Court of Hanang.

The applicant submitted that the Criminal Appeal No. 27 of 2022 was not heard on merit, hence, the applicant was denied the right to be heard, because the preliminary objection raised by the respondent had an effect of striking out the appeal but not dismiss it. Procedurally, a dismissal of appeal means that the appeal has been heard on merit and striking out means that the appeal is incompetent, he cited the case **Ngoni Matengo Co-Operative Union Ltd versus Ali Mmohamed Osman.**

And also cited case of **William Shija versus Fortunatus Masha** [1997] TLR 213 which held, inter alia that

".....when the appeal had been struck out: in that situation if a party still wishes to appeal fresh application had to filed in the High Court seeking extension of time in which to give notice of appeal".

It should be noted that the well-established principle is that an application for extension of time is entirely in the discretion of the court to grant or refuse and that extension of time may only be granted where

it has been sufficiently established that the delay was due to sufficient cause and that the said delay (if any) was not caused by his negligence. Hence, the court will consider the circumstance of the case and see whether it is for interest of the of justice, the applicant may be granted such additional time to realise the contemplated remedy, see the case of **Mumello Vs. Bank of Tanzania** [2006] 1 EA 227 (CAT) where it was inter alia held;

"It is trite law that an application for extension of time is entirely in the discretion of the court to grant or refuse it, and that extension of time may only be granted where it has been sufficiently established that the delay was with sufficient cause".

Sufficient cause will usually depend on the circumstance of a case, in the case of **Lyamuya Construction Co. Ltd Vs. Board of Registered of Young Women's Christian Association of Tanzania** (civil Application No. 2 of 2010) [2011] TZCA 4; **Samwel Sichome Vs. Bulebe Hamis** (Civil Application 8 of 2015) [2016] TZCA 307 and **Henry Muyaga Vs. TTCL**, Application No. 8 of 2011, where it was reiterated as follows-

"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, the degree of prejudice the respondent stands to suffer if time is not extended, whether

the applicant was diligent, whether there is a point of law of sufficient importance such as the illegality of the decision sought to be challenged and the overall importance of complying with prescribed timelines”.

It is on record that the district court dismissed the applicant's appeal on 8.12.2022 and he instituted the first application, which was baptized as **Misc. Criminal Application No. 44 of 2023**, seeking for extension of time to this Court, on 27.4.2022. This Court struck out the application on 30.8.2023 for being incompetent. After this Court struck out the application, the applicant instituted the instant application on 19.9.2023. The applicant took four months and 19 days from the date of dismissal of his appeal to file an application for extension of time. He explained that he obtained a copy of the ruling which did not depict the original case number, he returned it to the district court for rectification. The district court gave him a rectified copy of the ruling on 28th March, 2023. He added that the district court gave him a copy of the ruling without a drawn order. On 13.3. 2023 he applied for a drawn order which he obtained on 14.3.2023.

Given the chronological order of events narrated, the applicant did not account for time from the date the district court supplied him with a copy of the ruling to the time he filed the first application. I take that he

had no reason to waste time to request for the drawn order as in the law does not require a person appealing from any criminal decision to attach a drawn order. He applied for the drawn order out of his ignorance of the law. It is settled that ignorance of the law is not a good a reason for extension of time. See the case of **Zebitisi Kawuku V. A. Karim (1938) 5 ECCA 37** where it was held that-

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

In addition, the applicant did not account for delay from the time he obtained the drawn order on 14.3.2023 until the time he filed the application to this Court on 27.4.2023. He delayed for no good reason. It is settled that a Court may extend time upon the applicant accounting for every day of his delay. See the case of **Sebastian Ndaula v Grace Rwamafe** Civil Application No 4 Of 2014 (Unreported) the Court of Appeal stated as follows:-

"The position of this court has consistently been to the effect that in application for extension of time the applicant has to account for every day of the delay."

The fact that the applicant was not vigilant in pursuing his right should not escape any one's attention. **The law serves the vigilant, not those who sleep.** The applicant slept on his right to appeal on

time and was not diligent in pursuing his right, he delayed applying for the drawn order, the document, which is not required to support his appeal. Not only that he failed to account all the period of delay. Consequently, I am of the decided view that the applicant has failed miserably to adduce sufficient reasons for his delay. For, that reason I dismiss the application.

It is ordered accordingly.

Dated at Babati, this 7th day of **March**, 2024.



A handwritten signature in black ink, appearing to read "J. R. Kahyoza".

J. R. Kahyoza
JUDGE

Court: Ruling delivered in the presence of Mr. Ndonjekwa for the applicant, the applicant and the respondent. B/C Ms. Fatina (RMA) present.

A handwritten signature in black ink, appearing to read "J. R. Kahyoza".

J. R. Kahyoza
JUDGE
7/3/2024