

**IN THE HIGH COURT OF TANZANIA
(DODOMA SUB REGISTRY)
AT DODOMA**

MISC. CRIMINAL APPLICATION NO. 41126 OF 2023

*(Arising from the Judgment of the District Court of Iramba at Kiomboi dated
16/11/2023 in Criminal Case No. 53 of 2020 before Hon. L.O Khamsini, PRM)*

HUSSEIN YEMBA..... APPLICANT

Versus

REPUBLIC RESPONDENT

RULING

Date of last order: 11th March, 2024.

Date of Judgment: 11th March, 2024.

E.E. KAKOLAKI, J.

This is uncontested application by the applicant herein for extension of time within which to file a notice of intention to appeal against the judgment of the District Court of Iramba at Kiomboi in Criminal Case No. 75 of 2023 dated 16/11/2021, sentencing the applicant to pay a fine of Tshs. 50,000/- per each offence out of the four charged with within six months for the sentence date or suffer three years imprisonment. And in addition to that, payment of Tshs. 5,526,000 and Tshs. 5,968,000 as compensation to Rajabu Gunda and Kolokolo Gunda respectively. The application is brought under section 361(2) of the Criminal Procedure Act, [Cap. 20 R.E 2022] supported by the applicant's affidavit.

Briefly the applicant herein being discontented with the judgment of the trial court dated 16/11/2023 as cited above, could not timely issued a notice of appeal within 10 days as required by the law and file his appeal in this Court in time. The reason advanced is sickness which allegedly suffered soon after the decision. It is from that background this application is preferred praying this Court to extend him time to file the notice out of time as stated above.

When the matter was called on for hearing the applicant appeared represented by Mr. Leonard Elias Magwayega, learned advocate as for undisclosed reasons he could not enter appearance in person, whereas the respondent enjoyed the services of Mr. Gothard Mwingira, learned State Attorney who when probed informed the Court that, the respondent was not contesting the application.

The law under section 361(2) of the Criminal Procedure Act, [Cap. 20 R.E 2022] empowers this Court to grant this application upon good cause shown as there is no fast and hard rule as to what amounts to good cause. I so say as good cause includes relevant materials or any sufficient reason that prevented the applicant from performing the action within the prescribed time limitation. See the cases of **Regional Manager, Tanroads Kagera Vs. Ruaha concrete Company Ltd**, Civil Application No. 96 of 2007,

Osward Masatu Mwizarubi Vs. Tanzania Fish Processing Ltd, Civil Application No. 13 of 2010 (both CAT-unreported) and **Jumanne Hussein Bilingi Vs. Republic** (Criminal Application No. 20 of 2014 [2015]TZCA 342 (21 July 2015); www.tanzlii.org.tz. In **Jumanne Hussein Bilingi** (supra) the Court of Appeal had this to say:

*“...what amounts to good cause is upon the discretion of the Court and it differs from case to case. But basically **various judicial pronouncements defined good cause to mean reasonable cause which prevented the applicant from pursuing his action within the prescribed time.**”*
(Emphasis added).

Submitting in favour of this application Mr. Magwayega for the applicant hinted the Court that, the decision sought to be impugned by the applicant was delivered by the trial court on 16/11/2023, in which notice to appeal was to be issued by the applicant within 10 days of the said decision. However, the applicant could not make it for the reason of sickness as on the 17/11/2023 he suddenly fell sick suffering from severe vomiting and fever which later on came to be diagnosed as B. Pneumonia and Brucella by the Bukundi Health Centre located at Meatu District in Simiyu region, where the applicant attended as outpatient before he later on after five days returned to the same facility and admitted for further medical care until when

he was discharged on 12/12/2023, when ten days within which to issue the Notice of appeal had lapsed. Reliance was made to the report from the Bukundi Health Centre issued on 15/12/2023 referring to the patient as **Seni Yemba**, aged 50 years old as referred and annexed to applicant's supporting affidavit in paragraph 4. For that reason Mr. Magwayega urged this Court to grant the application as the same was also not contested by the respondent. Having considered both parties submissions, the supporting affidavit and its annexure, the only calling issue for determination is whether the applicant has shown sufficient cause warranting this Court exercise its discretion to grant the application. The law as it stands now is settled that, illness if proved is sufficient cause for extension of time as it was held in the case of **Emmanuel R. Maira Vs. The District Executive Director, Bunda District Council**, Civil Application No. 66 of 2010 (CAT-unreported) where the Court of Appeal had this to say:

"Health matters, in most cases, are not the choice of human being; cannot be shelved and not can anyone be held to blame when they strike. Applicant's failure to file the Notice of Appeal between the handing down of the decision..., has good cause behind..."

As sickness can strike anyone at any time without notice it is in view of this Court that, for the party to successfully rely on the ground sickness or illness for extension of time, cogent evidence must be submitted to the Court supporting it including medical certificate or report from renowned and reputable medical facility. In the present matter I learn, the person who allegedly fell sick and attended by Bukundi Health Centre on 17/11/2023 is **Seni Yemba**, aged 50 years old different or distinct from Hussein Yemba, the applicant before this Court. In paragraph 4 of the affidavit in support of this application the applicant deposed that, the said **Seni Yemba** is also known as **Hussein Yemba**, without more. With due respect to the applicant, I am not prepared to accept that bare assertion without any legal proof by way of affidavit regarding to usage of names or a deed poll for change of names legally proving that, the two names of **Seni** and **Hussein** refer to one and the same person and are used interchangeably. In absence of such proof the applicant remains with nothing in hands to exhibit to the Court's satisfaction that, soon after the decision he is intending to challenge he fell sick and therefore prevented from issuing Notice of appeal in time. In other words the applicant has failed to establish to this Court's satisfaction that, there is good cause warranting this Court exercise its discretion to grant him extension of time

within which to issue a Notice of appeal against the decision of the District Court of Iramba at Kiomboi in Criminal Case No. 75 of 2023.

In view of the above reasons, I find the application before this Court is wanting in merit and the same is hereby dismissed.

It is so ordered.

Dated at Dodoma this 11th March, 2024.



E. E. KAKOLAKI
JUDGE
11/03/2024.

This ruling has been delivered at Dodoma today on 11th day of January, 2024, the presence Mr. Leonard Elias Magwayega, advocate for the appellant who is absent for being outside, Mr. Gothard Mwingira, State Attorney for the respondent and Ms. Veradina Matikila, Court clerk.
Right of appeal explained.



E. E. KAKOLAKI
JUDGE
11/03/2024.

