

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

DC. CRIMINAL APPLICATION NO. 30 OF 2023

*(Originating from Criminal Case No. 3 of 2021 of the District Court of
Tabora)*

DIRECTOR OF PUBLIC PROSECUTION.....APPLICANT

VERSUS

KABEZYA LUHEGE..... RESPONDENT

RULING

Date of Last Order: 19/02/2024

Date of Delivery: 21/03/2024

MANGO, J.

The Applicant filed this application seeking extension of time to lodge petition of appeal out of time against the decision of the District Court of Tabora in Criminal Case No. 3 of 2021. The application is by way of chamber summons made under section 379(2) of the Criminal Procedure Act, [Cap 20 R.E 2022], accompanied by an affidavit sworn by Ms Ida Rugakingira for the Applicant.

Briefly, the Respondent was charged and convicted with the offence of Causing Grievous Harm contrary to Section 225 of the Penal Code, [Cap 16 R.E 2022]. She was then sentenced to one year conditional discharge in which she was ordered to serve community service under a probation officer. She was also ordered to compensate the complainant Tshs. 300,000/= within three months. The Applicant was dissatisfied with the

sentence meted by the trial Court and wishes to appeal against the same. The Applicant successfully obtained extension of time to file the intended appeal via Misc. Criminal Application No. 27 of 2021. Unfortunately, the Applicant's appeal was allegedly rejected for failure to attach a copy of judgement. Since time granted by the court has expired, the Applicant filed the application at hand seeking enlargement of time to enable the Applicant to file the appeal.

During hearing of the application, Ms. Idda Rugakingira learned State Attorney appeared for the Applicant while the Respondent appeared in person.

Submitting in support of the application, the learned State Attorney highlighted briefly relevant facts in this matter. She submitted that, the decision of the trial court was delivered on 13th July 2021 and the Applicant filed a notice of appeal on 17/08/2021 through e-filing system of the judiciary. The appeal was returned because the Applicant didn't attach a copy of the judgment subject of the appeal.

She asserted that, when it came to the Applicant's knowledge that the appeal was rejected, time limit for appeal had already expired. According to her, failure to attach the copy of judgment was caused by technical challenges in judiciary e filing system. She alleged that the e-filing system was misbehaving.

Ms Idda submitted further that, on 20/10/2021 the Applicant filed an application for extension of time to lodge an appeal which was granted by the Court on 2/6/2023. The Court granted the Applicant seven days to file the intended appeal. On 6/6/2023 the Applicant filed an appeal through

e-filing. After two weeks, the Applicant found out the appeal was rejected for failure to attach a copy of judgment.

Ms Idda also advanced illegality in the trial Court's decision. She highlighted the alleged illegality to be the sentence that was ordered by the trial Court. She argued that, the offence committed by the Respondent attracts seven (7) years imprisonment, surprisingly, the trial court sentenced the Respondent to one year conditional discharge. According to her, the sentence is in contravention of the law. Thus, the Applicant has approached this court again for enlargement of time to file an appeal in order to clear the illegality by re-assessing proportionality of the sentence.

She referred the Court to the case of **Lyamuya Construction Co. Ltd v. Registered Trustees of Young Women's Christian Association of Tanzania, Civil Application No. 2 of 2010** to cement her arguments that, the Applicant has acted promptly and has advanced good reasons for extension of time.

The Respondent objected the application. She argued that, the application has been filed after she has served the entire sentence at Miemba Court premises. She wonders what will happen in case the appeal will be successful. She prayed this application be dismissed in order to ensure finality of Court proceedings.

Having heard both parties, I can now determine the application. The guiding principle for application of this nature to be granted is that applicant should account for each day of delay with a sufficient cause. See; **Saidi Ambunda vs Tanzania Harbours Authority, Civil Application No. 177 of 2004** and **Lyamuya Construction Co. Ltd v.**

Registered Trustees of Young Women's Christian Association of Tanzania, Civil Application No. 2 of 2010.

The Applicant advanced two reasons in his efforts to account for the delay in filing the intended appeal. The reasons advanced are illegality and technical challenges in the e-filing system. The Respondent has not countered any of the reasons advanced by the Applicant. She only submitted on her fears as to what will happen if the intended appeal will be successful. Such fears and prospects of the intended appeal are not relevant in determining the application at hand. Thus, I will proceed to assess whether the reasons advanced by the Applicant are sufficient enough to move this Court grant enlargement of time to file the intended appeal.

I will start with illegality. It is trite law that for illegality to be considered as a ground for extension of time, the same should be clear on face of record. See, the case of ***Lyamuya Construction Co. Ltd v. Registered Trustees of Young Women's Christian Association of Tanzania***. It is clear from the submission by the learned State Attorney that, the alleged illegality in this matter is not clear on face of record. The alleged illegality concerns the assessment of sentence that was done by the trial Court. Its determination attracts arguments as to whether the sentence that was issued by the trial Court was proportional to the offence committed by the Respondent or not. I don't want to dwell much in this point but it worth mentioning that, the provision that creates the offence of causing grievous harm, section 225 of the Penal Code, does not provide for any mandatory sentence. In that regard, I am of a considered view that, the alleged illegality cannot be considered to be clear on face of

record. Thus the Court cannot be moved by this ground to enlarge time for the Applicant.

The alleged technical difficulties in the judiciary e-filing system seems to be convincing at this juncture in which the judiciary is in transition from physical filing system to electronic filing systems. Unfortunately, the same is not supported by any evidence. The Applicant has not attached even a print out of a receipt which indicated the reasons for the alleged rejection of the appeal. It is trite law that, the Court cannot be moved by mere words. The Applicant ought to have attached an affidavit of the Deputy Registrar or any other responsible court officer acknowledging existence of the technical challenges in the judiciary e- filing system at the time the appeal was allegedly filed.

In absence of such proof, granting enlargement of time will create a blanket ground for extension of time even when parties did not encounter any challenges in filing their cases through electronic filing system. In that regard, I find the Applicant to have failed to account for his delay to file his intended appeal. Consequently, the application is hereby dismissed.

Dated at Tabora this 21st day of March 2024



A handwritten signature in black ink, appearing to read "Z. D. Mango", written over a set of horizontal and vertical grid lines.

Z. D. MANGO
JUDGE

