

IN THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

(DISTRICT REGISTRY OF MBEYA)

AT MBEYA

MISC. CRIMINAL APPLICATION NO. 63 OF 2020

*(Originating from Criminal Case No. 150 of 2019 in the Resident
Magistrates' Court of Mbeya at Mbeya.)*

JOHN PETER.....1ST APPELLANT

BONIFACE MWAISELO.....2ND APPELLANT

VERSUS

THE REPUBLIC.....RESPONDENT

JUDGEMENT

Date of Hearing : 28/07/2020

Date of Judgement: 28/07/2020


MONGELLA, J.

The applicants herein are seeking to be granted extension of time within which to appeal out of time against the decision of the RMs court for Mbeya in Criminal Case No. 150 of 2019. The decision was issued on 13th December 2019. This application was argued orally whereby the appellants appeared in person while the respondent was represented by Mr. Hebel Kihaka, learned State Attorney. During the hearing the applicants prayed for their joint affidavit to be adopted as their submission.



In their joint affidavit the appellants' main reason for the delay was to the effect that they delayed in obtaining copies of judgment which were crucial in lodging the appeal. They said that the copies of judgment and proceedings were availed to them on 24th February 2020 and they prepared and signed their petition of appeal on 10th March 2020. They argued that the delay was beyond their control and thus prayed for the court to allow their application.

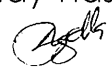
On his part, Mr. Kihaka first prayed to adopt the counter affidavit filed by the respondent. He then proceeded to oppose the application on the ground that no sufficient reason has been advanced. He argued that the applicants under paragraph 2 of their joint affidavit stated to have received the copies of judgment and proceedings on 24th February 2020 and thereafter prepared and signed the petition of appeal on 10th March 2020. He contended that between 24th February and 10th March 2020 it was exactly 16 days thus within time. He argued that the applicants then ought to have filed their appeal within 45 days which ended on 8th April 2020. He argued further that the applicants have provided no explanation on the delay in filing their appeal after receiving the copies of judgment and proceedings. He added that from the date the 45 days elapsed to date this application 40 more days have elapsed and there is no explanation on what they were doing in all these days. He concluded that for failure to provide explanation on the delayed days after receiving copies of judgement and decree, their application lacks merit and should be dismissed.



In rejoinder, the applicants submitted that after conviction they were taken to "Gereza la Kilimo" where they had no control of the appeal process. They said that since this information was not included in their joint affidavit they should be allowed to withdraw the application and re-file it after amending the affidavit.

I have considered the arguments by both parties. It is settled under the law that extension of time is purely under the discretion of the court. However, the said discretion has to be exercised judiciously. In their affidavit, the applicants stated that there was delay in obtaining copies of judgment and that they obtained the same on 24th February 2020. Section 19 (2) of the Law of Limitation Act, Cap 89 R.E. 2002 instructs that the time spent waiting for copies of judgment has to be deducted in computing the time prescribed under the law. The period therefore between 13th December 2019 whereby the applicants were convicted and sentenced and 24th February 2020 when they obtained copies of judgment and proceedings is excluded from computation of time.

The applicants however, filed this application on 26th May 2020 which is more than forty days from the date of obtaining copies of judgment and proceedings. This is the period which they were obliged to account for. In their joint affidavit, the applicants never accounted for the period on this further delay. It is this period where the contention lies as the respondent's counsel argued that the applicants have failed to account for the days between obtaining copies of judgment and filing of this application. It is a settled position under the law that each and every day of the delay has



to be accounted for. In **Bushiri Hassan v. Latifa Lukio Mashayo**, Civil Application No. 03 of 2007 (unreported) it was held:

"...delay of even a single day, has to be accounted for, otherwise there would be no point of having rules prescribing period within which certain steps have to be taken."

See also, **Lyamuya Construction Company Ltd. v. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 (unreported) and **Moto Matiko Mabanga v. Ophir Energy PLC, Ophir Services PTY LTD & British Gas Tanzania Limited**, Civil Application No. 463/01 of 2017.

In rejoinder the applicants submitted that they were placed at "Gereza la Kilimo" whereby it was difficult for them to prepare the application immediately after obtaining copies of judgment and proceedings. This Court however, cannot entertain this argument because it being a matter of fact was not pleaded in the affidavit in support of the application. Besides it was raised as a new fact in rejoinder whereby the respondent had no chance to reply thereof. See: **Registered Trustees of the Arc Diocese of Dar es Salaam v. The Chairman, Bunju Village Government & 11 Others**, Civil Appeal No. 147 of 2006.

By not accounting for the delayed dates after receiving the copies of judgment and proceedings, the applicants have failed to provide sufficient reasons to warrant this Court to grant leave to appeal out of time. Their application is therefore dismissed.

Dated at Mbeya this 28th day of July 2020,


L. M. MONGELLA
JUDGE

Court: Judgment delivered at Mbeya through virtual court on this 28th day of July 2020 in the presence of the applicants appearing in person and Mr. Hebel Kihaka, learned State Attorney for the Respondent.


L. M. MONGELLA
JUDGE