

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF MOSHI
AT MOSHI
CRIMINAL APPLICATION NO. 02 OF 2020**

THE REPUBLIC APPLICANT

VERSUS

**DORINE D/O WILLIAM LEMA..... 1ST RESPONDENT
INNOCENT S/O FOWLAND MCHARO.....2ND RESPONDENT
WALTER S/O MATHAYO KILEO.....3RD RESPONDENT
JOHNSON S/O ISACK MASSAWE.....4TH RESPONDENT**

RULING

T. M. MWENEMPAZI, J

The applicant is applying for an order extending time to file a Notice of appeal out of time as well as to file an appeal out of time. An application is made under the provisions of section 379(2) of the Criminal Procedure Act, Cap 20 RE. 2019 and any other enabling act or provision of the law. The applicant also prayed for any other order or relief this court may deem fit and just to grant due to the circumstance of this matter.

The application is supported by an affidavit sworn by Lucy Kyusa State attorney duly authorized to handle the matter. In it she has sworn and stated that this application originate from Criminal Case No. 63 of 2017. In that Criminal Case, the 1st, 2nd, 3rd and 4th respondent herein were charged with two counts namely conspiracy contrary to section 384 of the Penal Code,

Cap 16 RE. 2002 and section 271 of the Penal Code, Cap 16 RE. 2002 read together with section 126 (1) and (2) of the cooperative societies Act No. 1 of 2013.

At the time, the Cases at Siha District court were being prosecuted by Public Prosecutors other than the State Attorney, to be specific, the prosecutors were from the Police. A Judgement in the referred case was delivered on the 24th June, 2019 whereby the verdict was that all the accused (respondents) were acquitted in both counts. Neither notice of appeal was filed in the District Court of Siha nor was the National Prosecution office (herein after referred so as NPS) was informed of the Judgement. The NPS came to know all the above facts on the 13th October, 2019 through a letter by MANIO AMCOS LTS, where-by the latter complained that the Prosecutors from Police Force are reluctant to file appeal against the trial court's decision. The complaint was not with exhibits attached to it. As a result the NPS had to request exhibits from the District Court, and also the process of reviewing the proceedings commenced in order to decide whether the applicants should appeal or not. In their finding the intended appeal has an over whelming chance of successes. Hence, they commenced the process to file this application.

Therefore, the delay to file notice of intention to appeal and the appeal thereto against the Judgement of the trial court was due to misinformation between the NPS office and office of Public Prosecutors at same District. The delay to file notice of intention to appeal and the appeal was not intentional or due to their negligence.

The respondents in this case were not served as they could not be traced. When the matter was scheduled for hearing at various dates the respondents were absent until on the 29th March, 2020 Mr. Kassim Nassir state attorney prayed that the matter be heard Ex-parte. It could not, however, proceed again due to various reasons.

It is unfortunate that it took time for the applicants to recognize that the matter can be disposed off by way of written submission. So on the 21/06/2021 the state attorney prosecuting the matter prayed for an order to file written submission which order was granted.

In the submission filed on the 28/07/2021 the learned State Attorney submitted that the Respondent, Republic is aggrieved by the acquittal of the Respondents and therefore they intend to appeal against the whole Judgement and acquittal of the respondents. But due to the reasons stated in the affidavit of Lucy Kyusa, state Attorney, the Republic was unable to file a notice of appeal in time and hence this application.

Section 379(2) of the Criminal Procedure Act, Cap 20 RE 2019 enables this Court to grant prayers sought in the Chamber Summons Only when there is good cause for delay. In the referred affidavit there is a good cause. According to the learned State Attorney, the fact that the impugned case was prosecuted by police prosecutors in Siha and that the Attorney General has no office in that District negates all inaction and negligence on the part of the Republic in the delay to file the notice of appeal.

The Republic acted promptly once it become aware of the Judgement by looking for the record and after reviewing the same it became obvious that

there were serious illegalities in the Judgement of the court based on points of Law such as the fact that the District Court of Siha acted without jurisdiction to try economic offences as a Criminal Case.

It has been argued by the counsel for the applicant that there is no agreed definition of what amounts to good cause for delay. He invited this court to refer to the case of **Mpoki Lutengano Mwakabuta and Another Vs Jane Jonathan**, Civil Application No 566/01 of 2018 (Unreported) at page 3.

The counsel thus prayed that the application be granted as the applicant has demonstrated a good cause for delay.

I have noted that despite the delay caused due to failure in the Communication the counsel has submitted also that the Court had no jurisdiction as the District Court tried an economic offence as a Criminal Case. By that argument the learned state attorney is inviting this court to grant an extension of time on the basis of the point of illegality.

In the case of **Lyamuya Construction Co Ltd Vs Board of Registered Trustees of Young women's Christian Association of Tanzania**, Civil Application No 2 of 2010 Court of Appeal of Tanzania at Arusha (unreported) it was observed that:-

"Every applicant who demonstrate that his intended appeal raises points of law should as of right, be granted extension of time if he applies for one. The court emphasized that such point of law, must be that "of sufficient importance" and I would add that it must also be apparent on the face of the

record, such as the question of jurisdiction, not one that would be discovered by a long drawn argument or process”.

According to the Submission; the point relied upon is that of illegality with the effect of touching the jurisdiction of the Court. That being the case whatever was done was without proper authority and or power. It is necessary the same be rectified. It therefore necessary that extension of time should be granted. However even without illegality, the applicant acted with promptness to look for the necessary information and file this application, as deposed in the affidavit.

Under the circumstances, the applicant has shown good cause and this court can exercise its discretion to extend time so that the applicant can file a notice of appeal and an intended appeal out of time. The application is thus granted and the applicant should file the necessary documents within forty five days (45 days) from the date of this ruling. It is ordered accordingly.

Dated and delivered on the 26th day of August, 2022.




T. M. MWENEMPAZI

JUDGE

Ruling delivered in the absence of the applicant's counsel.


T. M. MWENEMPAZI

JUDGE