

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**IN THE SUB- REGISTRY OF MANYARA**

**AT BABATI**

**CRIMINAL APPLICATION No. 20 OF 2023**

(Arising from Criminal Case No. 113 of 2022 of Babati District Court)

**IDDY ISSA @ JAFARI.....APPLICANT**  
**VERSUS**

**REPUBLIC .....RESPONDENT**

**RULING**

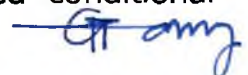
15/8/2023 & 24/8/2023

**BARTHY, J**

The above-named applicant, together with two others who are not parties to this application were arraigned before the District Court of Babati (trial court) charged with one count of stealing contrary to sections 265 of the Penal Code [CAP 16 R.E 2022].

It was alleged before the trial court that on 15/10/2021 at Oyster Bay area within Babati District, the applicant and two others, did steal one motor cycle with registration number MC 638 CJH make King Lion valued at Tsh. 1,700,000/= the property of one Paulo John Aloyce.

After a full trial, the applicant and his colleagues were convicted and sentenced differently. The applicant's colleagues received conditional



discharge, whereas the applicant was sentenced to four years imprisonment.

The applicant intended to challenge the said decision, but unable to do so timely, hence he has preferred the instant application under section 361 (1) & (2) of the Criminal Procedure Act [CAP 20 RE 2022], (the CPA) seeking for the following reliefs;

- 1. That, this honourable court be pleased to extend time of filling my petition of appeal (out of time) in the High Court of United Republic of Tanzania.*
- 2. That, this Honourable Court be pleased to make any other orders or relief(s) as it deems fit and just to grant in this application.*

The application is supported by an affidavit sworn by the applicant himself. On the other hand, the respondent lodged a counter affidavit to contest the application.

When the application was called on for hearing, the applicant appeared in person while the respondent was represented by Ms. Anifa Ally, learned state attorney. The application was disposed of orally.

The applicant in his submission in support of the application, he claimed that he is in prison and could not make follow up of his case. He went on stating that, he tried to request an assistance from the prison

but, to no avail. He further stated he was kept in a camp for three months after he was imprisoned.

It was until an advocate visited his client in the prison, the appellant had to request for his assistance. The applicant urged the court to grant the prayer sought.

On reply submission Ms. Anifa Ally adopted the content of counter affidavit to form part of her submission. She further submitted that the application is devoid of merit. She pointed out on paragraphs 2 and 3 of the applicant's affidavit who deposed that he had engaged advocate Mahagi of Arusha to prepare and lodge his appeal, but the applicant did not have funds to pay the advocate and there was no good communication between them.

Ms. Anifa Ally was firm that the reasons advanced by the applicant are not sufficient to warrant this application be granted as required by the provision of section 361 (2) of the CPA. She contended that there is no evidence that the applicant engaged advocate Mahagi from Arusha as averred.

Ms. Anifa Ally was emphatically the period of five months had passed since the applicant was supplied with copies of judgment and proceedings, counting from 6/12/2022 to 9/5/2023 when the instant application was lodged.



She referred to the case of **Benjamin Amon v. Republic**, Criminal Application No. 106 of 2018, Court of Appeal of Tanzania at Dar es Salaam (unreported), whereby it stated the delay should not be inordinate.

She went on stating the applicant did not account for the whole period of delay as required. She referred to the case of **Benjamin Amon v. Republic** (supra).

On further submission the learned state attorney maintained that, there is no affidavit from the advocate engaged by the applicant to prepare his documents to substantiate the applicant's claim. It was stated, in absence of such affidavit, it is clear the applicant was negligently in pursuing his appeal.

She contended that the applicant had no intention to pursue his appeal as he never made follow up or acted diligent in taking necessary steps to his case. The reference was made to the case of **Benjamin Amon v. Republic** (supra). In her concluding argument she maintained that, the applicant has not advanced any sufficient reason to have this court grant the application.

On a brief rejoinder the applicant stated that he does not know the law. He therefore left the matter for the court to decide.



Having gone through parties' rival submission, the sole issue for my determination is whether the applicant has advanced sufficient reason for the court to grant him an extension of time.

The application is preferred under Section 361 (1) and (2) of CPA. The said provision requires an aggrieved party to lodge an appeal within 45 days, which has to be preceded by notice which is required to be lodged within 10 days from the decision sought to be appealed against.

In case one fails to lodge the appeal within the given period, the remedy is to apply for extension of time under section 361 (2) of the CPA. The said provision reads;

*361 (2) The High Court may, for good cause, admit an appeal notwithstanding that the period of limitation prescribed in this section has elapsed. [Emphasis added].*

It follows therefore that, in order to succeed in an application for extension of time, the applicant must demonstrate good cause. However, the quoted provision of the law does not define what constitutes good cause. Hence, in the case of **Oswald Masatu Mwizarubi v. Tanzania Fish Processing Ltd**, Civil Application No. 13 of 2010 (unreported) the Court of Appeal stated that;



*"What constitutes good cause cannot be laid down by any hard and fast rules. The term 'good cause' is a relative one and is dependent upon the party seeking extension of time to provide the relevant material in order to move the Court to exercise its discretion"*

Therefore, in determining what constitutes good cause it will depend with the circumstance of each case. However, from case authorities there are certain factors providing guidance on whether or not the applicant has shown good cause.

In the case of **Benjamin Amon v. Republic** (supra) cited by Ms. Ally, the Court of Appeal expounded some factors to be taken into consideration in determining whether the applicant has advanced sufficient cause. The said factors are;

- i) The applicant must account for the period of delay.*
- ii) The delay should not be inordinate.*
- iii) The applicant must show diligence and not apathy, negligence or sloppiness of the action that he intends to take.*
- iv) If the court feels that there are other sufficient reasons such as the existence of the point of law of*



*sufficient importance such as illegality of the decision  
sought to be challenged.*

See also the case of **Lyamuya Construction Company Limited v. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 (Unreported).

In the instant application, the impugned decision was delivered on 1/11/2022. The applicant admitted in his affidavit that he was supplied with the certified copies of proceedings and judgment on 6/12/2022.

The applicant was required to lodge his appeal within 45 days from the date he was supplied with copies of the judgment and proceedings; that is, the appeal should have been lodged on or before 20/1/2023.

Since this application was filed before this court on 11/5/2023, there is the delay of more than three months counting from the last day the appeal was required to be filed.

The period of more than three months is an inordinate delay. The applicant was therefore required to account on each day of delay. Going through the affidavit in support of the application, the applicant has not discharged that burden.

The applicant deposed that he had engaged the advocate to prepare the appeal for him but they lacked communication. Also, he could not make payments, as the appeal was never lodged. The applicant did

not depose on his affidavit as to when he had engaged the advocate and when he realized that the appeal was not lodged.

The need to account each of the delay was emphasized in the case of **Bushiri Hassan v. Latifa Lukio Mashayo**, (supra) where the Court of Court of Appeal emphasized that;

*"...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."* [Emphasis added].

The applicant blames his advocate namely Mahagi who was required to lodge the applicant's appeal, but he did not do so. It is also clear that there is no affidavit from the said advocate to confirm if at all he/she was ever engaged by the applicant to prepare and file the intended appeal.

In the case of **Dianarose Spareparts Ltd v. Commissioner General Tanzania Revenue Authority**, Civil Application No. 245/20 of 2021 Court of Appeal at Dar es Salaam (unreported), on page 9 it was held that;

*"The stance of the law is that, where an affidavit mentions another person on a material point, that other person on a material point, that other person should also take an affidavit".*





The applicant also made an assertion it was the mistake of that advocate for his delay. It is now a settled law that, the mistake or negligence of an advocate is not an excuse for delaying. This position of the law was amplified by the Court of Appeal in the case of **Tanzania Rent a Car Limited v. Peter Kimuhu**, Civil Reference No. 28 of 2019 (unreported) in which the Court stated that;

*"... that failure by the advocate to act within the dictates of the law does not constitute a good cause for enlargement of the time - see also Exim Bank (Tanzania) Limited (supra)."*

Consequently, I find the applicant has not advanced any sufficient good cause for the court to exercise its discretion for extension of time. It is for that reason I proceed to dismiss this application for want of merits.

It is so ordered.



**Dated at Babati this 24<sup>th</sup> August 2023.**

**G. N. BARTHY,  
JUDGE**

Delivered in the presence of the applicant in person and Ms. Leah Viosena learned state attorney for the respondent.

A handwritten signature in blue ink, appearing to be "G. N. Barth", is written over a horizontal line.