

IN THE HIGH COURT OF TANZANIA
(MWANZA SUB-REGISTRY)
AT MWANZA
MISC. CRIMINAL APPLICATION NO. 4 OF 2023

BETWEEN

ROSE DINDA JOSHUA.....APPLICANT

AND

THE REPUBLIC.....RESPONDENT

RULING

Last Order 07/08/2023.

Ruling 11/09/2023

Kamana, J:

This application seeks an extension of time that will enable the applicant, a convict who is serving a custodial sentence, to lodge her notice of appeal against the decision of the District Court of Nyamagana at Nyamagana. The conviction and eventual five-year jail sentence was in respect of child stealing.

The application that has been preferred under section 361 (2) of the Criminal Procedure Act, Cap. 20 [R.E. 2019] is supported by an affidavit of Rose Dinda Joshua, the applicant, and it sets out grounds on which prayers sought in the application are based.

The reasons for the application are spelled out in paragraphs 2 and 3 of the affidavit. The applicant's main contention is that the delay was

caused by the situation that she was going through as her biological child passed away while she was in prison. She also avers that she was unable to engage a lawyer who would help her draw the grounds for appeal. It was not until she came to know from one of the prison paralegals, that she couldn't appeal without notice of appeal, hence she preferred this application.

The application has been met with opposition from the respondent. Through a counter-affidavit, sworn by Mr. Christopher Olembile, the respondent's state attorney, the grounds on which the application is based have been opposed. The respondent avers that the appeal does not stand any overwhelming chance of success. The deponent has further averred that no exceptional circumstances or unusual reasons have been adduced to move the Court to grant the application.

Hearing of the matter took the way of oral submissions. Kicking off the discussion was the applicant who contended that she is illiterate and after the sentence was passed against her, she got confused. While in prison she received information that her biological child had passed away. She didn't know that she could have received legal aid in prison. By the time she realized that she could receive that service, the time to appeal had already lapsed hence this application.

Submitting in rebuttal, Mr. Olembile, learned State Attorney adopted the counter affidavit to form part of his submissions. He submitted that the applicant has failed to account for the days in which she delayed filing a notice of appeal. He kept on contending that the applicant had failed to bring evidence that she was confused or she lost her child. On the intention to appeal as provided under Section 363 of the CPA through which the applicant would communicate her intention to appeal to the prison officer, he says that there was no affidavit adduced to that effect. He insisted that on applications of this nature, the applicant must account for each day of the delay. He cited the decision in the case of **Lyamuya Construction Co. Ltd v. Board of Registered Trustees of Young Women Christian Association of Tanzania**, Civil Application No. 2 of 2010. Based on these averments he prayed for the application to be dismissed.

From the parties' competing submissions, the singular issue is whether the application is meritorious.

The current position of law is to the effect that the applicant may move the Court and upon credible reasons, the Court may grant an extension of time within which the applicant to file an appeal out of

prescribed time. This is reflected under Section 361 (2) of the CPA which provides as follows;

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

In the case of **Hamis Ismail @ Zulu v. Republic**, Criminal Appeal No. 205 of 2014 (unreported) Court of Appeal stated that:

*'Under the above section the underlying factors for consideration in an application for extension of time is good cause for the delay. **What the High Court had to consider in determining the application was whether the affidavit filed by the appellant to support his application gave good cause for the delay.'***

Based on the quoted position of law, the sole determinant factor for this Court to grant this application or otherwise is whether or not the applicant has established good cause showing reasons for the delay.

Looking at the reasons adduced for the delay in taking action timely, I observe nothing but vindication by the applicant that she went through

a hard time after her conviction and subsequent loss of her child. It would be unfair to hold that such a delay was a result of the applicant's sloppiness, negligence or any sense of apathy. Having taken this view, the decision in Lyamuya's case as cited by the learned state attorney is distinguishable based on the circumstances of the current matter.

In the upshot, I find that the application is meritorious, and I grant it. The applicant is given 45 days to file the notice of appeal and the appeal itself.

Order accordingly.

DATED at MWANZA this 14th day of September, 2023.



KS KAMANA

JUDGE