

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE SUB- REGISTRY OF MANYARA

AT BABATI

MISC. CRIMINAL APPLICATION No. 33 OF 2023

(Arising from conviction and sentence in Criminal Case No. 30 of 2020 Mbulu District Court)

PAULO BOAY.....APPLICANT

VERSUS

REPUBLICRESPONDENT

RULING

21/9/2023 & 4/10/2023

BARTHY, J.

The above-named applicant has preferred the instant application seeking for the following reliefs;

- 1. That, this honourable court be pleased to grant extension of time for lodging an appeal.*
- 2. That, this Honourable Court be pleased to grant any other relief as it deems fit and just.*

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.



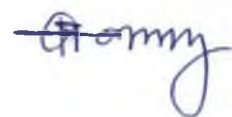
When the application was called on for hearing, the applicant appeared in person while the respondent was represented by Mr. Johnson Ndibalema, learned state attorney. The application was disposed of orally.

In the applicant's submission in support of the application, he submitted that, he was granted an extension of time before the Resident Magistrate with extended jurisdiction and he duly filed his appeal, but the same was struck because it had a wrong title of the court.

He further submitted that, he filed another application before the High Court Registry of Arusha and he was granted an extension of time in which he was required to lodge the appeal within 14 days. He claimed to have prepared his petition of appeal and submitted the same to the prison admission office. He waited for his appeal to be called, but he was later told to lodge his appeal before this court.

The appellant was emphatic that, being a prisoner, he faced with challenges and he urged the court to grant the prayer sought.

On reply submission made by Mr. Ndibalema learned state attorney, at the foremost he adopted respondent's counter affidavit to form part of her submission. He went on stating that, in the affidavit in support of the application, the applicant had deposed that, he was transferred to different prisons. However, he never named the said prisons for the court to gauge on that information.



Mr. Ndibalema maintained that, there is the need to account for each day of the delay as it was emphasized in the case of **Republic v. Yona Kpanda and others** [1985] TLR 84 and the case of **Benjamin Amos v. Republic**, Criminal Appeal No. 106 of 2018 (unreported).

On the claim made by the applicant that he lost his documents at the prison was scolded by Mr. Ndibalema contending that, the same was not sufficient for the court to grant the extension of time. He went on arguing that, the applicant had stated he made the application for extension of time which was granted. That was said to be an indication that the applicant is abusing the court process. To this argument he cited the case of **Jackson Mafie v. Republic**, Misc. Criminal Application No. 27 of 2023 (unreported).

Mr. Ndibalema further stated the applicant has never filed a notice of appeal as required in terms of section of 361(1)(a) of the Criminal Procedure Act [CAP 20 R.E. 2022], (hereinafter referred to as the CPA). He was firm that, the applicant had not advanced good cause for his delay.

On rejoinder submission the applicant maintained that, himself being the prisoner it is the duty of the prison officer to file notice of intention to appeal. To conclude he reiterated his arguments made his submission in chief.



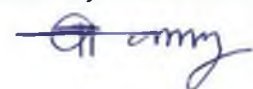
Having gone through the parties' rival submissions, the sole issue for my determination is whether the applicant has advanced sufficient reason for the court to grant him an extension of time.

In terms of section 361 (1) and (2) of CPA, an aggrieved party of a decision of the district court exercising its original jurisdiction in criminal matters is required to lodge an appeal within 45 days to this court which has to be preceded by notice, which is required to be lodged within 10 days of the decision sought to be appealed against.

In case one fails to lodge the appeal within the said period of time, 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 state what constitutes good cause. In the case of **Osward 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"

It follows therefore that, what constitutes good cause depends on the circumstance of each case. However, from decided cases, certain factors in determining whether or not the applicant has advanced good cause in extending time sought.

In the case of **Benjamin Amon v. R** (supra) cited by Mr. Ndibalema, the Court of Appeal expounded some factors to be taken into consideration in determining whether the applicant has advanced sufficient cause. The 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 applicant readily admitted that he was granted an extension of time twice to lodge his appeal, but he was unable to do so for the reasons that were not made clear in his affidavit. The applicant just claimed to have handed his petition of appeal to the prison officer, but his appeal was not filed within time.

The applicant could not depose as to when he was handed over his petition of appeal and name of the prison officer was not disclosed. It was not made clear as to why the said prison officer never filed the applicant's appeal within time.

There was no affidavit of the said prison officer filed to support what the applicant asserted. Where an affidavit mentions another person, there ought to be his/her affidavit to confirm such information. This requirement was emphasized in the case of **Dianarose Spareparts Ltd v. Commissioner General Tanzania Revenue Authority**, Civil




Application No. 245/20 of 2021 [CAT] at Dar es Salaam (unreported), at page 9 where 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"

I have taken into account the applicant's argument that he was transferred to different prisons. Rightly as argued by Mr. Ndibalema, the applicant not only did not mention the names of prisons in which he was transferred to, but he also did not give dates of the time he was transferred. This information was necessary for the court to scale the extent of the delay. The information was crucial to be furnished as the applicant was required to account for each day of the delay caused by such transfer.

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].

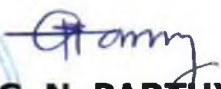
In the instant application the applicant has not discharged that burden apart from generally claiming that he was transferred to different prisons.

Consequently, I find the applicant has not advanced any sufficient reason for the court to exercise its discretion to grant the 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 4th October 2023.




G. N. BARTHY

JUDGE

Ruling delivered this 4th day of October, 2023 in the presence of appellant and Mr. Johnson Ndibalema State Attorney for republic.