

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
CORRUPTION AND ECONOMIC CRIME DIVISION**

AT MTWARA

ECONOMIC APPLICATION NO. 2 OF 2022

DATO SERI LEE YEE JIAT..... APPLICANT

VERSUS

THE REPUBLIC RESPONDENT

(Arising from the decision of this Court in Economic Case No. 2 of 2018)

RULING

19th December, 2023

KISANYA, J.:

The applicant, Dato Seri Lee Jiat, seeks an extension of time within which to file a notice of appeal to the Court of Appeal to challenge the decision of this Court in Economic Case No. 2 of 2018. This application is made under section 11(1) of the Appellate Jurisdiction Act, Cap. 141 R.E. 2019 (the AJA) and is supported by an affidavit of the applicant. In opposition, Ms. Edith Mauya, a State Attorney employed by the National Prosecutions Service, has filed a counter-affidavit.

The facts underlying this application are stated in the supporting affidavit and can be summarized as follows: The applicant was brought before this Court for the offence of unlawful possession of shark fins without a license, contrary to section 18(1) of the Deep Sea Fishing Authority Act, No. 1

of 1998, as amended, and regulation 26 of the Deep Sea Fishing Authority Regulations, 2009, read together with paragraph 26 of the First Schedule, and section 60 of the Economic and Organized Crime Control Act [Cap. 200, R.E. 2002], as amended by Act No. 3 of 2016.

On 6th December 2018, the applicant entered a plea of guilty to the charges. Subsequently, he was convicted as charged and sentenced to pay fine of TZS 1,000,000,000/= or to serve twenty years imprisonment in default. Upon failing to file a notice of appeal within the time prescribed by the law, the applicant has brought this application seeking the aforementioned relief.

During the hearing of this matter, the applicant appeared in person, whereas the respondent was represented by Mr. Timotheo Geoffrey Mmari, learned Senior State Attorney. Pursuant to the Court's order, the application was heard by way of written submissions. Both parties filed their respective written submissions as directed by the Court.

The applicant commenced his submission by expressing his plea for an extension of time within which to appeal against the decision of this Court. He asserted that he was sick both before and after the decision subject to this application. To substantiate his claim, the applicant produced various medical

documents from Jakaya Kikwete Cardiac Institute (JKCI). Furthermore, he argued that, while serving the sentence at Lilungu Prison, he experienced heart congestion, leading to admission to Mtwara Referral Hospital.

The applicant contended that he was innocent of the alleged offence and asserted a defense of alibi. Consequently, he urged this Court to grant the application.

In response, Mr. Mmari contended that the applicant ought to have filed a notice of appeal on or before 5th January, 2019. He further asserted that the applicant was obligated to explain the delay from 6th January, 2019 to 24th June, 2022, the date when this application was filed in this Court. Mr. Mmari argued that the applicant's submissions should be disregarded for being based on the grounds which were not deposed in the supporting affidavit. To support his position, he cited the case of **Camel Concrete (T) Ltd vs Tanzania National Roads Agency (TANROADS) and Another**, Misc. Civil Application No.675 of 2020 (unreported).

Referring to section 11(1) of the AJA, Mr. Mmari submitted that this Court is vested with unfettered discretion to grant the application upon showing good cause for the delay. He further argued that the Court is required to exercise its discretion by taking into account factors such as the

extent of the delay, whether the applicant has provided a reasonable explanation for the delay, and whether there was no apathy, negligence, or lack of diligence on the part of the applicant. To fortify his argument, he cited the case of **Lyamuya Construction Company Ltd vs Board of Registered Trustees of Young Women's Christina Association of Tanzania**, Civil Appeal No. 2 of 2010 (unreported).

The learned State Attorney further contended that the applicant is precluded from appealing against conviction based on his guilty plea. Additionally, he argued that the applicant had failed to substantiate any point of illegality pertaining to the sentence in question. In support of his position, he cited the cases of **R vs Yona Kaponda and 9 Others [1985] TLR 84, Lyamuya Construction Company Ltd (supra), and Azizi Mohamed vs R**, Criminal Application No. 84/07 of 2019.

Further the foregoing, he emphasized that the applicant should have provided a detailed account of each day of the delay as stated in the case of **Barya Engineering and Contracting Co. Ltd vs Hamoud Ahmed Nassor**, Civil Application No. 342/01 of 2007 (unreported).

Regarding the reason for the delay, Mr. Mmari put forth that the applicant claimed to have received wrong advice from his advocate, on the

right to appeal. He submitted that the record shows that the applicant was indeed informed of his right to appeal. Furthermore, Mr. Mmari argued that the applicant failed to account for each day of the delay, as the date on which he became aware of his right to appeal was not disclosed.

Concerning the ground of sickness, the learned State Attorney argued that it was not proved. He further contended that the applicant had failed to demonstrate whether the alleged illness had any impact on his mental capacity to make an informed decision regarding whether to pursue an appeal. Mr. Mmari further submitted that the issue of sickness was not raised at the time of the plea. Therefore, he urged the Court to dismiss the application due to its lack of merit.

In his rejoinder, the applicant prayed for this Court to grant the application based on the grounds stated in his submission in chief.

Having duly considered the submissions and arguments presented by both parties, the pivotal question revolves around whether the applicant has demonstrated good cause justifying the grant of an extension of time.

This application is grounded on section 11(1) of the AJA which expressly states:

"11.-(1) Subject to subsection (2), the High Court or, where an appeal lies from a subordinate court exercising extended powers, the subordinate court concerned, may extend the time for giving notice of intention to appeal from a judgment of the High Court or of the subordinate court concerned, for making an application for leave to appeal or for a certificate that the case is a fit case for appeal, notwithstanding that the time for giving the notice or making the application has already expired."

As correctly argued by Mr. Mmari, the power bestowed upon this Court to extend time under the above provision is discretionary. This discretion is inherently judicial and, therefore, must be wielded in alignment with the principles of reason and justice, avoiding any reliance on personal opinions or arbitrary considerations. This stance was stated in the case of **Lyamuya Construction Company Ltd** (supra). Consequently, the exercise of such power is subject to the demonstration of good cause.

I fully concur with the learned State Attorney's argument that there exists no universally agreed-upon definition of what constitutes "good cause." The court, in exercising its discretion, must consider or examine the specific circumstances of each case. The established factors for consideration encompass the duration of the delay, the reasons behind the delay, the potential harm the respondent may incur if time is extended, the diligence on

part of the applicant, and whether there exists a substantial legal point, such as illegality in the decision to be challenged. There is plethora of authorities reiterating this position. See for instance, the cases of **Lyamuya Construction Company Limited** (supra) and **The Principal Secretary, Ministry of Defence and National Service vs. Devram P. Valambhia** [1992] T.L.R 387.

In light of the foresaid legal principles, I have carefully reviewed the supporting affidavit and noticed that the applicant relies on the reasons deposed in the following paragraphs:

4. That, I was aggrieved by the decision, but I failed to file my notice of intention to Appeal to the Court of Appeal of Tanzania through Prison Authority admission because I was wrongly advised by my advocate that I cannot appeal due to my pleaded guilty.

5. That, as the time went on, by now I have realized that according to the law (section 360 of the Criminal Procedure Act [Cap. 20, R.E. 2019], I have the right to appeal even though I pleaded guilty.

6. That, the failure to file notice of intention to appeal within the prescribed time was caused by circumstances beyond my control because at that time I was still as new foreigner to this country of Tanzania.

Based on the excerpt from the supporting affidavit, it is evident that the applicant admits that the delay in filing the notice of appeal stemmed from ignorance of law or procedure on his part and possibly on his legal counsel as well. However, the established legal precedent states that ignorance of the law or procedural matters does not constitute a good cause to justify an extension of time. This principle was underscored in the case of **Vedasto Raphael vs Mwanza City Council and 2 Others**, Civil Application No. 594/08 of 2022 (unreported), where the Court of Appeal held:

"Ignorance of law or rather procedure involved in doing something does not constitute good cause to warrant extension of time."

Being guided by the aforementioned legal stance, I hold that, the applicant's contention that he was wrongly advised by his counsel on his right to appeal does not constitute a good cause for seeking an extension of time. Furthermore, as submitted by Mr. Mmari, it is evident that the applicant was duly informed by this Court about his right to appeal.

That aside, it is a settled position of law that an appeal is not permitted for an accused person who has pleaded guilty and has been convicted based on such plea. The exception to that general position arises when the appeal is based on the ground of legality of the sentence or when the plea is deemed

equivocal. In the present case, the applicant did not depose to any point of illegality in the decision of this Court, let alone the sentence. On that account, I am inclined to hold that the applicant has not demonstrated good cause to warrant extension of time to file a notice of appeal.

Even if I was to consider that the applicant was indeed wrongly advised by his former counsel, I concur with Mr. Mmari's contention that a detailed account of each day of delay has not been given. In paragraph 5 of the supporting affidavit, the applicant asserts that he later realized he was entitled to the right to appeal against the decision founded on a guilty plea. However, the affidavit fails to specify the date on which he became aware of this right. As a result, this Court lacks the necessary information to determine whether the applicant took prompt and necessary action immediately upon learning of his right to appeal.

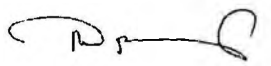
Final for consideration is the ground of sickness. The applicant contends that he was sick both before and after the decision subject to this application. It is imperative to note that this ground was not deposed in the supporting affidavit. Consequently, all submissions made in support of the ground of sickness are considered as assertions from the bar. It is trite law that, statement from the bar is not evidence and thus, court cannot act upon the

same. To the contrary, submissions serve as expositions or explanations on evidence that has been admitted. This legal position was underlined in the case of **The Registered Trustees of the Archdiocese of Dar es Salaam vs The Chairman Bunju Village Government and 11 Others**, Civil Appeal No. 147 of 2006 (unreported). Given that the ground of sickness was not deposed in the supporting affidavit, I find it not appropriate to consider the same. This is also when it is considered that, the respondent was not in a position to present evidence to counter this ground.

In the final event, I am of the firm view that there exists no good cause justifying this Court to extend the time within which the applicant may file the notice of appeal to the Court of Appeal. Therefore, I hereby dismiss this application for want of merit.

DATED this 19th day of December, 2023.




S.E. KISANYA
JUDGE
19/12/2023