

TANZANIA / JUDGMENT

Bruno

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA IN THE SUB-REGISTRY OF
MANYARA AT BABATI MISC. CRIMINAL APPLICATION NO. 3258 OF 2024 (Original, Criminal
Case No. 124 of 2021, in the District Court of Babati at Babati) BRUNO CH ISO
TI.....APPLICANT VERSUS
REPUBLIC.....RESPONDENT

RULING

08th April & 13th May, 2024 D.C. KAMUZORA, J This is an application for extension of time to lodge a notice of appeal so as to appeal against the decision of the district court of Babati in Criminal Case No 124 of 2021. The Applicant was charged and convicted for the offence of trafficking narcotic drugs contrary to section 15A (1) and (2)(c) of the Drugs Control and Enforcement Act [Cap 95 R.E 2019]. He was sentenced to serve 18 years imprisonment. The Applicant was not satisfied with the decision and intend to appeal to this court to challenge that decision. Since he delayed in instituting the appeal, he preferred the current application under the provision of section 361(2) of the Criminal Page 1 of 8 Procedure Act, [Cap 20 R.E 2022] seeking for extension of time to lodge notice of appeal to this court. When the matter was called for hearing, Mr. Abdallah Kilobwa, learned Advocate appeared for the Applicant and Ms. Ester Malima, learned State Attorney appeared for the Respondent, Republic. Submitting in support of application, Mr. Abdallah Kilobwa argued that the Applicant was in prison and did not know legal procedures to appeal thus he was unable to appeal on time. That, after the Applicant was supplied with copies of judgment, he intended to prepare his appeal but while discussing with his fellow prisoners, he was informed that he was supposed to lodge notice of appeal but at that time, the time to lodge notice was already lapsed. That, the Applicant has brought this application to seek leave of this court to lodge notice out of time. The counsel for the Applicant insisted that, since extension of time is the discretion of the court, this court be pleased to use its discretion and allow the application so that the Applicant can lodge an appeal to this court. In reply, Ms. Ester Malima, learned state attorney adopted the counter affidavit and submitted that the argument by the counsel for the Applicant is centred on ignorance of the Applicant on legal procedures. She argued that, the Applicant had enough knowledge of the procedures Page 2 of 8 and he was bound to lodge notice on time. She explained that prior to this application, the Applicant lodged Appeal No. 20 of 2023 to this court in relation to this matter and an order for re-trial was made by Hon. Kahyoza J, on that appeal. That, since this is the second time the

Applicant is approaching this court, it cannot be said that he was not conversant with appeal procedures and therefore, he was bound to follow procedures for appeal. The learned state attorney referred the case of Benjamin Amon Vs. Republic, Criminal application No 106/11 of 2018 [2020 TZCA] 335 on the grounds to be considered in extending time. She pointed out that the Applicant is bound to account for each day of delay but in this application, he was unable to account for the delay. That, the delay must not be inordinate but the Applicant delayed for 109 days as the notice was lodged two months later and this application was filed after lapse of four months thus, there was inordinate delay. She added that, the Applicant had to prove that he was not negligent and acted diligently. That, the impugned decision was made on 11/09/2023 but a notice of intention to appeal was lodged on 28th November, 2023 and this application on 12/02/2024. For her, the Applicant was negligent and not diligent in taking action for him to appeal. Referring the case of Benjamin Amon (supra) which referred the decision in Bushir Hassan Vs Latifa Lukio Mashayo, Civil Application No. 3 of 2007, the learned state Page 3 of 8 attorney insisted that the delay of even a single day has to be accounted for as there will be no reason for having limitation provisions. She therefore urged this court dismiss the application for want of merit. In rejoinder, the counsel for the Applicant submitted that having another appeal does not make the Applicant conversant to the court procedures. On the argument based on the case of Benjamin Amon, (supra) he submitted that the said case is irrelevant to the case at hand as it refers application for extension of time to appeal while the matter before this court is an application for extension to time to lodge notice of appeal. To him, the conditions referred in that case are inapplicable to this case. On the argument that there is inordinate delay, the Applicant's counsel submitted that, the law does not specify the time for filling an application for extension of time. He reiterated the prayer for extension of time to lodge a notice to appeal. This application was preferred under section 361(2) of the Criminal Procedure Act which read: - "The High Court may, for good cause, admit an appeal notwithstanding that the period of limitation prescribed in this section has elapsed. " From the above provision, good cause must be shown for this court to admit an appeal thus, the provision used by the Applicant refers powers Page 4 of 8 of the high court in admitting an appeal irrespective of lapse of prescribed time limit. What is referred as good cause for admitting an appeal out of time has not been defined under the law. The interpretation is found in different case laws by this court and the Court of Appeal. I will therefore address the relevance of the case of Benjamin Amon, (supra) to this case. While the learned state attorney urged this court to refer the grounds which shows good cause for extension for time set in that case, the counsel for the Applicant claimed that those grounds are inapplicable to the matter at hand. He argued that the court in Benjamin's case was dealing with an application for extension of time to appeal while this application is for extension of time to lodge a notice of appeal thus, those grounds are inapplicable to the matter at hand. It is unfortunate that even the provision used to move this application does not specifically mention notice of appeal rather an appeal. The counsel for the Applicant did not demonstrate other grounds which are applicable to his case. Basically, the notice of appeal is the base for an appeal thus, one cannot separate extension of time to file notice of appeal from extension of time to appeal. Whenever an application for extension of time to lodge notice of appeal is granted, it automatically gives right to the Applicant to subsequently file an appeal. In that regard, the case

of Benjamin Amon (supra) is much relevant to matter at hand hence, Page 5 of 8 cannot be distinguished. At page 6 of the ruling of the Court of Appeal held; "In exercising its discretion of whether or not to grant extension of time the Court is required to consider the following factors which may not be exhaustive, but at the moment they include, that: -

- (a) the Applicant must account for all the period of delay;
- (b) the delay should not be inordinate;
- (c) the Applicant must show diligence, and not apathy, negligence or sloppiness of the action that he intends to take; and
- (d) if the court feels that there are other sufficient reasons, such as existence of a point of law of sufficient importance such as the illegality of the decision sought to be challenged. In the matter at hand, I have cautiously considered the affidavit in support of application, counter affidavit and rival submissions by counsel for the parties. From the Applicant's affidavit, his reason for delay was because he was not aware of the procedures for appeal. His advocate also submitted cementing on that ground. I agree with the learned state attorney that, ignorance of either law or procedures cannot stand as good excuse for delay in pursuing legal right. In the case of Ally Kinanda and 2 others Vs. Republic, Criminal Appeal No. 1 of 2016, the Court of Appeal, the Applicant claimed that he delayed in pursuing his application due to failure to get legal assistance. The Court of appeal found that reason weak and reasoned that the ground Page 6 of 8 relied upon by the Applicants, raises an issue as to whether ignorance of law constitutes sufficient cause for granting extension of time. It concluded that ignorance of law does not constitute sufficient cause for granting extension of time. It referred its decision in the case of Ngao Godwin Losero Vs. Julius Mwarabu, Civil application No. 10 of 2015 (unreported), where it was held: - "As has been held times out of number, ignorance of law has never featured as good cause for extension of time (See for instance/ the unreported ARS Criminal Application No. 4 of 2011, Bariki Israel Vs the Republic; and MZA Criminal Application No. 3 of 2011 - Charles Salugl Vs the Republic). To say the least a diligent and prudent party who is not properly seized of the applicable procedure will always ask to be appraised of it for otherwise he/she will have nothing to offer as an excuse for sloppiness." From the above holding, it is obvious that the Applicant's reasoning that he did not know appeal procedures cannot stand and sufficient reason for extension of time. Even if we assume that ignorance of the procedure is an excuse, still cannot stand in the matter at hand because the Applicant was unable to justify that he was not aware of the appeal process. His counsel never denied the fact that this is not the first time for the Applicant to knock the door of this court. The record shows that the Applicant once successfully challenged the decision of the district court Page 7 of 8 before this court in Criminal Appeal No. 20 of 2023 and an order was made for the trial court to re-hear the evidence of one prosecution witness and give right to the Applicant to present his defence. After compliance to those directives, the trial court composed a new judgment and convicted the Applicant. From that record, the Applicant knew the procedures for appeal as opposed to his claim that he did not know the procedures. The record also shows that the

decision was made by the district court on 11th September, 2024. The Applicant admitted in his affidavit that he was supplied with copies of judgment and he did not complain if there was any delay. He however lodged this application on 12th February, 2024 which is four months after the decision was made. It is unfortunate that the Applicant did not justify or account for the delay of four months. In the upshot, the reasons advanced by the Applicant were not sufficient enough to convince this court that there was good reason for delay in filing notice of appeal. I therefore find this application devoid of merit and proceed to dismiss it. DATED at MANYARA this 13th Day of May, 2024 Page 8 of 8

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