

TANZANIA / JUDGMENT

DPP VS REMMY GERALD SIPUKA 1

COURT
TANZLIIDECIDED
25 November 2024

Source: media.tanzlii.org · Research copy typeset by Esheria. Not court-issued or certified.

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA CORRUPTION AND ECONOMIC
CRIMES DIVISION AT DAR ES SALAAM ECONOMIC APPLICATION NO. 24872 OF 2024 DIRECTOR
OF PUBLIC PROSECUTIONS APPLICANT VERSUS REMMY GERALD
SIPUKA RESPONDENT

RULING

15th and 25th November, 2024 KISANYA, J.: This application seeks an extension of time to file a forfeiture application before this Court. It is made under section 9(5) of the Proceeds of Crime Act, Cap. 256, R.E. 2022 (POCA), and is supported by the affidavit of Tully James Helela, a Senior State Attorney with the National Prosecutions Services. The respondent has filed a counter-affidavit to contest the application. The supporting affidavit sets out the background as of the case follows: On 6th October 2017, the respondent, Remmy Gerald Sipuka, along with another person, Amina Juto Juma, were arrested for trafficking narcotic drugs. They were subsequently charged of that offence before this Court in 1 Economic Case No. 05 of 2019. On 16th March 2019, the respondent was convicted of trafficking in narcotic drugs, while his co-accused was acquitted due to lack of sufficient evidence. It is asserted that the amount of TZS 3,876,000/= found with the respondent and his co-accused was admitted as evidence during the trial, yet this Court did not issue an order regarding this sum after convicting the respondent. Be that as it may, the respondent was dissatisfied with the decision of this Court and appealed to the Court of Appeal in Criminal Appeal No. 67 of

2019. The appeal was dismissed on 29th July 2021. Undeterred, he filed a review in Criminal Application No. 37/1 of 2021 before the Court of Appeal. However, the review application was also dismissed for lack of merit, on 21st June 2024. The applicant, the Director of Public Prosecutions, now seeks an extension of time to file a forfeiture application for the amount of TZS 3,876,000/= which was admitted into evidence during the trial. It is contended that the delay was caused by the pending appeal and review processes before the Court of Appeal. In his counter-affidavit, the respondent does not contest his conviction by this Court for trafficking in narcotic drugs or the dismissal of his appeal and 2 review application by the Court of Appeal. Nonetheless, he adamantly disputes the claim that these legal proceedings hindered the applicant from filing the forfeiture application within the required period. The hearing proceeded via written submissions, with Ms. Tully Helela,

a learned Senior State Attorney, representing the applicant, and the respondent appearing pro se. In her submission supporting the application, Ms. Helela began by restating the facts outlined in the supporting affidavit. Referring to section 9(5) of the POCA, the learned Senior State Attorney argued that the Court has the discretion to extend time if good cause is shown. Ms. Helela further submitted that "good cause" is not expressly defined by the law, and its determination depends on the specific circumstances of each case, as established in *Kalunga and Company Advocates v. National Bank of Commerce Limited* [2006] TLR 235. In the context of this case, she argued that paragraphs 7, 8, 9, 10, and 11 of the supporting affidavit offered a satisfactory and sufficient explanation for the delay in filing the application within the prescribed period. 3 Ms. Helela further referred to the case of *Omary Ally Nyamalenge and 2 Others*, where it was held that the degree of prejudice to the respondent if time is extended, the length of the delay, the reasons for the delay, and the existence of a point of law such as illegality are factors for consideration. She argued that the applicant's decision to await the respondent's exhaustion of all appellate stages constituted a sufficient ground and demonstrated that the delay in filing the application was not due to neglect. In light of the foregoing, Ms. Helela concluded her submission by urging the Court to exercise its discretion and grant the orders sought in the interest of justice. The respondent vehemently opposed the application. He adopted his counter-affidavit and agreed with the learned Senior State Attorney's submission that section 9(5) of the POCA permits the extension of time for filing a forfeiture application, provided good cause is shown. However, he argued that the applicant had failed to demonstrate good cause for the delay in filing the application. The respondent highlighted that under section 9(2) of the POCA, a pending appeal does not prevent the filing of a forfeiture application. He 4 further pointed to section 17 of the same Act, which gives the Court the mandate to discharge a forfeiture order if the conviction upon which it is based is quashed. In his view, even if the conviction were overturned on appeal, the Court would still be entitled to discharge the forfeiture order. Therefore, citing *NBC Limited and Another vs Bruno Vitus Swalo*, Civil Appeal No. 331 of 2019 [2021] TZCA 122, and *Sarbjit Singh Bharya and Another vs NIC Bank Tanzania Limited*, Civil Appeal No. 94 of 2021

[2021] TZCA 212, the respondent contended that the applicant had not provided adequate grounds for the delay. Based on these points, he requested the Court to dismiss the application and order the return of TZS 3,876,000/= that had been seized from him. I have carefully considered the submissions from both parties. As rightly argued by the learned Senior State Attorney, it is a well-established legal principle that the decision to grant or refuse an application of this nature rests within the discretion of the Court. This discretion, however, must be exercised judiciously, based on the existence of good cause. 5 I also agree with Ms. Helela, that, although section 9(5) of the POCA does not define what constitutes "good cause," case law has laid down the guiding principles. Some notable cases relevant to this point include *Republic vs. Yona Kaponda & 9 Others* [1985] TLR 84, *Kalunga and Company Advocates* (supra) and *Osward Masatu Mwizarubi vs. Tanzania Fish Processing Ltd*, Civil Application No. 13 of 2010 (unreported). In the latter case, the Court

of Appeal underscored: "What constitutes good cause cannot be laid down by any hard and fast rules. The term 'good cause' is relative and depends on the circumstances of each case and the relevant material presented by the applicant to persuade the Court to exercise its discretion." Moreover, an essential factor to consider in such applications is whether the applicant has accounted for each day of delay, as held in *Bushfire Hassan vs Latina Lucia Masanya*, Civil Application No.3 of 2007 (unreported) that: "Delay of even a single day has to be accounted for otherwise there would be no point of having rules prescribing periods of delay within which certain steps have to be taken." 6 It is worth noting that, according to section 9(1) of the POCA, a forfeiture application must be filed within twelve months following the date of conviction. Since the respondent was convicted on 15th March 2019, the statutory period for filing the forfeiture application lapsed on 14th March 2020. However, the present application was filed on 30th August 2024, which amounts to a delay of more than four years and five months. The question before this Court is whether there is sufficient good cause to justify such a significant delay. In his affidavit, the applicant attempts to justify the delay by accounting for the period up to 21st June 2024, during which the respondent's appeal and subsequent review application were pending before the Court of Appeal. I am alive to the established legal principles that the time spent pursuing legal remedies is considered a technical delay, which can constitute good cause for extensions. In this case, however, it was the respondent, not the applicant, who initiated both the appeal and the review proceedings. Thus, there is no indication that the applicant was pursuing legal remedies in court. Furthermore, under section 9(2) of the POCA the Director of Public Prosecutions is barred from filing a forfeiture application if an application under the same subsection or any other legal provision has already been 7 made and determined on the merits. The pendency of the appeal and review application, or the question of whether the accused has exhausted all local remedies, are not listed among the factors that preclude the filing of a forfeiture application. Additionally, as the respondent correctly pointed out, if the appeal had been successful, the Court could have discharged the forfeiture order in accordance with section 17 of the POCA. In this context, I hold the view that the existence of the appeal and subsequent review, which is the sole ground raised by the applicant, did not constitute sufficient reason to justify the delay in filing the forfeiture application. Assuming that the time taken for the respondent's appeal and review could justify the delay, the applicant has nonetheless failed to explain the delay from 21st June, 2024, when the review decision was delivered, to 30th August, 2024, when the current application was filed. This period, comprising sixty-nine days, remains unexplained in the supporting affidavit. There was an indication from Ms. Helela that the Court should also consider the degree of prejudice to the respondent if the time is extended. However, this ground was not included in the supporting affidavit, and as a result, the respondent did not respond to it under oath. Guided by the 8 principle that parties are bound by their pleadings, I will not take this into consideration. Based on the foregoing, I find that the applicant has not demonstrated good cause to warrant the extension of time sought. Consequently, the application is dismissed for lack of substantial merit. As for the respondent's request for the return of his money, I am of the opinion that

this matter should be handled in the economic case file, where the said amount was admitted as an exhibit. DATED at DAR ES SALAAM this 25th day of November, 2024. S.E. KISANYA JUDGE 9

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE	https://media.tanzlii.org/media/judgment/322525/source_file/10c653da61b6c6c4/DPP_VS_REMMY_GERALD_SIPUKA_1.pdf
CASE PAGE	https://chat.esheria.ai/case-law/tanzania/director-of-public-prosecutions-v-remmy-gerald-sipuka-extensionoftime-tanzlii-2024

Prepared on 14 October 2026 · Esheria