

TANZANIA / JUDGMENT

ernest nyodo vs republic

2023 tzhc 16990 28 april 2023

COURT
TZHCDECIDED
28 April 2023

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IN THE HIGH COURT OF TANZANIA ^ MOROGORO DISTRICT REGISTRY AT MOROGORO
CRIMINAL APPEAL NO 37 OF 2022 (Originating from Criminal Case No. 05 of 2021 in the District
Court of Kiiossa, at Kiiossa) ERNEST NYODO APPELLANT VERSUS THE REPUBLIC RESPONDENT

RULING

28th April, 2023 CHABA, J. Aggrieved by the decision of the District Court of Kiiossa, at Kiiossa in Criminal case No. 05 of 2021 delivered on 25th May, 2021, the appellant herein, Ernest Nyodo lodged the present appeal intending to challenge the same. However, the Respondent/Republic attacked the appeal by filing a notice of preliminary objection on the point of law to the effect that, the appeal was filed out of the statutory time. At the onset, the appellant conceded to the ground of objection. He conceded and admitted this appeal was filed out of time. Page 1 of 7 At hearing of the raised preliminary objection, the applicant fended for himself, whereas the Respondent/Republic was represented by Ms. Theodora Mielwa, learned State Attorney. Submitting in support of the preliminary objection, Ms. Mielwa highlighted that, under section 361 (1)(a) and (b) of the Criminal Procedure Act, [Cap. 20 R. E, 2022] (the CPA), the law says, an appeal may be heard upon compliance with the law, that the appellant must file his/her appeal within forty-five (45) days from the date of judgment. She added that, the law further provides that if the appellant was delayed to be supplied with the relevant documents, then the time will start counting from the date, he/she was supplied with such documents. The learned counsel averred that, from the record it is evident that the appellant / accused was convicted by the trial Court on 27th May, 2021 and the notice of intention to appeal was lodged on 3rd June, 2021 which is within the time prescribed by the law. On the 30th April, 2022, the appellant was supplied with the copies of the impugned decision and the trial Court proceedings as well, and afterward filed the instant appeal on the 30th July, 2022. According to the learned State Attorney, from 30th April, 2022 up to 30th July, 2022 it is about sixty (60) days which is contrary to section 361(1)(b) of the CPA (supra) where the law provides for forty-five (45) days as time limitation for filing an appeal in this Court. Page 2 of 7 Based on the above submission, Ms. Mielwa concluded that, the present appeal was filed out of time and prayed the same be dismissed. Responding to the above submission, the appellant narrated that soon upon being convicted and sentenced by the trial Court with the offence of rape, he was sent to Dakawa

Prisons and thereafter was taken to Ukonga Prison in Dar Es Salasm Region, and finally was forwarded to Lindi Prisons. He explained further that, while at Lindi Prisons, he prepared his documents and filed his appeal. In that view, the appellant stated that due to movements from one Prisons to another in different Regions, it was too difficult to control and manage the movements of his documents, hence lamented that it was beyond his control to file the appeal within the time prescribed by the law. In her brief rejoinder, Ms. Mielwa, prayed the Court to dismiss this appeal and the appellant be advised accordingly to file his appeal pursuant to the guiding law since the appellant concedes that he delayed to file his appeal on time. From the above submissions by the parties, I wish to point out onset that, powers to extend time is vested to the discretion of the Court, and the same is exercised upon good cause or sufficient cause being shown. Usually, good cause depends on the circumstances of each case. Much as there is no universal definition of the term good cause, it is settled law that the existence of a good cause may be established by certain factors that have been lucidly stated by this Court and our Apex Court through various decisions including the case of Joel Silomba v. Republic, Criminal Page 3 of 7 Application No. 5 of 2012 (unreported), wherein the Court laid down factors to be considered in an application for extension of time at page 3 which are: -

- a) the length of the delay;
- b) the reason for the delay, was the delay caused or contributed by dilatory conduct of the applicant;
- c) whether there is an arguable case, such as, whether there is point of law or the illegality or otherwise of the decision sought to be challenged; and/or
- d) the degree of prejudice to the opposite party if the application is granted. However, the controlling provisions of the law on this facet as rightly submitted by the learned State Attorney is section 361 (1)(a) and (b) of the CPA (supra), which provides that: - "Section 361 (1) - Subject to subsection (2), an appeal from any finding, sentence or order referred to in section 359 shall not be entertained unless the appellant: -
 - (a) has given notice of his intention to appeal within ten days from the date of the finding, sentence or order or, in the case of a sentence of corporal punishment only, within three days of the date of such sentence; and
 - (b) has lodged his petition of appeal within forty-five days from the date of the finding, sentence or order. Page 4 of 7 save that in computing the period of forty-five days the time required for obtaining a copy of the proceedings, judgment or order appealed against shall be excluded.
- (2) The High Court may, for good cause, admit an appeal notwithstanding that the period of limitation prescribed in this section has elapsed. [Emphasis is mine]. Placing reliance on the above excerpt of the law, the question for consideration and determination by this Court is whether or not the appellant complied with the provisions of the law guiding the time limits for filing an appeal. I for once agree with the learned State Attorney that the instant appeal

is time barred. However, the applicant's blames have been thrown to Prisons Authority following his transfer from Dakawa Prisons to Ukonga and afterward to Lindi Prisons. In my view, it is undoubtful that such transfers were the main sources of delays and that it was out of the appellant's control to lodge the notice of intention to appeal and petition of appeal within the statutory time. I am alive to the truth that, when a prisoner is being transferred from one Prisons to another Prisons for reasons best known by the Prisons Authority, it is quite difficult for the particular prisoner to obtain his/her important required copies for lodging the notice of intention to appeal and the intended appeal within time in the presence of frequent transfers as alluded to above. Page 5 of 7 As correctly submitted by the learned State Attorney, the law Is clear under section 361 (1) (a) of the CPA that, the notice of appeal which initiates an appeal must be issued within ten days from the date the impugned decision was issued followed by the institution of the intended appeal within 45 days from the date of decision. As the law is coached is mandatory terms, it is obvious that the appellant's appeal is time barred. The only remedy available to the appellant is to lodge an application seeking for an extension of time within which to file the notice of intention to appeal and petition of appeal in accordance with the law. In the upshot, it is my holding that in the circumstance of this case, I am impotent to entertain an appeal filed out of time, unless leave is granted to that effect. Accordingly, this appeal is hereby struck out on the ground of being filed out of time. I so order. DATED at MOROGORO this 28th day of April, 2023. M. J. CHABA ' JUDGE 28/04/2023 Page 6 of 7 Court: Ruling delivered under my hand and Seal of the Court in Chambers this 28th day of April, 2023 in the presence of Mr. Shaban Abdallah Kabelwa, learned State Attorney who entered appearance for the Respondent / Republic and the Applicant who appeared in person, and unrepresented. M. jVcrtABA JUDGE 28/04/2023 Court: Rights of the parties fully Explained, cquRr[^] -7. \ M. J. CHABA X > JUDGE ./ y 28/04/2023 Page 7 of 7

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Prepared on 14 October 2026 · Esheria