

TANZANIA / JUDGMENT

MISC

COURT
TANZLIIDECIDED
31 October 2024

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

IN THE HIGH COURT OF TANZANIA (DAR ES SALAAM SUB-REGISTRY) AT DAR ES SALAAM
MISC. CRIMINAL APPLICATION NO. 14136 OF 2024 (Originating Misc. Criminal Application
No.261 of 2021) HAJI MSONGELA JUMA APPLICANT
VERSUS REPUBLIC RESPONDENT

RULING

15th September & 31st October, 2024 BWEGOGGE, J.: The above-named applicant instituted an application herein praying this court to enlarge the time within which to file a notice and petition of appeal in this court against the decision of this court in Misc. Criminal Application No. 261 of 2021. The application is brought under the provision of section 11(1) of the Appellate Jurisdiction Act [Cap 141 R.E 2019] and supported by the affidavit of Kung'e Nyamhanga Wabeya, the applicant's counsel. The record of this case entails the following facts: The applicant herein was arraigned in the Resident Magistrate Court of Dar es Salaam, at Kisutu, in Economic Crimes Case No. 60 of 2019 for economic offences and convicted on his own plea of guilty. Later on, he sought and obtained an extension of time to file the application [Misc. Criminal Application No. 83 of 2021] in this court seeking to defeat the decision of the trial court. Unfortunately, the application was struck out on 29th October, 2021, on the ground that the Applicant has a remedy of appeal. Thereafter, on 26th November, 2021 the applicant filed Misc. Criminal Application No. 261 of 2021 in this court seeking for extension of time within which to file an appeal against the decision of the trial court. Similarly, the application was found bereft of substance and dismissed. Undaunted, the applicant filed an appeal [Criminal Appeal No. 265 of 2022] in the Court of Appeal against the dismissal order of this court. Similarly, the appeal was struck out for being incompetent on 24th April 2024. Hence, this application. 2 The applicant was represented by Mr. Kung'e Nyamhanga Wabeya. The respondent republic was represented by Ms. Edith Mauya, learned state attorney. The parties hereto were granted leave to argue the matter by way of written submissions. The counsel for respondent Republic defaulted to file her submission in reply. Mr. Wabeya submitted that the provisions of section 11(1) of the Appellate Jurisdiction Act enjoins this Court with power to enlarge time within which the applicant may file notice of appeal upon the same furnishing sufficient reason. Hence, the applicant is obliged to account from the date the impugned decision was delivered to the date of filing the application at hand. The case *Okech Boaz Othiambo & Another vs. Salama Idi Kanyorota*, (Civil Application No. 900/15 of 2021) [2024] TZCA 291 was cited to buttress the point. In the same vein, the counsel expounded

that what amounts to sufficient reason and, or good cause depends on the material facts of each case. Suffices it to mention that, in elaborating matters deponed in the supporting affidavit, Mr. Wabeya submitted that the deposed facts demonstrate that the applicant herein has sufficiently accounted for the period of delay to warrant the grant of the extension of time as sought. 3 On the second limb of argument, the applicant's counsel argued that the impugned decision is tainted with illegalities. That it is the law of this land that illegality on its own constitutes good cause for an extension of time. The case of Ngolo Mgaga vs. Republic, (Criminal Appeal No. 331 Of 2017)

[2021] TZCA 624 and TANESCO vs. Mufungo Leonard Majura and Others, Civil Application No. 94 of 2016, CA (unreported), were cited to bring home the point. The counsel alleged that the charge levelled against the appellant was defective; hence, he intends to challenge the impugned decision on the ground that the decision which emanated therefrom is tainted with illegalities. Likewise, the counsel attacked the decision of this court in which it was opined that the variance between the statement of offence and the particulars of offence is not an illegality apparent on the face of the record; and a sentence emanating from a defective charge is not a nullity. Moreso, the counsel alleged that this court erred in law in holding that an unequivocal plea does not constitute illegality of the sentence. Otherwise, the counsel contended that the impugned decision of this court in Misc. Criminal Application No. 261 of 202 in that there is no sufficient cause advanced for grant of extension of time to lodge the intended appeal contradicts the previous decision in Misc. Criminal Application No. 83 of 2021 4 wherein this court ruled that there was good cause to grant of extension of time. Further, the counsel charged that this court disregarded the principle that the time spent in prosecuting the matter in court is a relevant factor for consideration and granting the application. Lastly, the counsel alleged that the impugned decision is tainted with illegality in finding that the negligence of counsel/ failure to take appropriate cause doesn't amount to sufficient cause for grant of extension of time. Based on the above grounds, the counsel prayed this court to grant the application herein. As aforementioned the counsel for respondent Republic defaulted to file her submission in reply. Suffices it to mention that in the counter affidavit filed by the respondent, the same vehemently contested the application herein contending that no sufficient ground has been advanced to warrant grant of extension of time. The question before this court for determination is whether this application herein is merited. As rightly submitted by the applicant's counsel, the provision of section 11(1) of the Appellate Jurisdiction Act enjoins this court with power to extend time for giving notice of intention to appeal notwithstanding that the period of 5 limitation has expired, for sufficient cause. In determining whether the deponed grounds amount to sufficient cause, the Apex Court in the case of Lyamuya Construction Company Limited vs. Board of Registered Trustees of Young Women's Christian Association of Tanzania (Civil Application 2 of 2010) [2011] TZCA 4 expounded the following factors for consideration:

1. The applicant must account for each and every day of delay.
2. The delay should not be inordinate.

3. The applicant shows diligence and not apathy, negligence or sloppiness in prosecution of the action he intends to take.
4. If the court feels that there are other sufficient reasons, such as the existence of a point of law of sufficient importance, such as illegality of the decision sought to be challenged. See also the cases; *AI Outdoor Tanzania Limited & Another vs Alliance Media Tanzania Limited* (Civil Application No. 178 of 2008)

[2009] TZCA 70 and *Laurent Simon Assenga vs Joseph Magoso & Another* (Civil Application No. 50 of 2016) [2016] TZCA 80. In substance, the applicant has purported to account for the period of delay; and likewise raised a plea of illegality on the decision sought to be challenged. Now, I would proceed to test the grounds advanced for grant of 6 extension to find the merit thereof. It is glaring on record that the Apex Court pronounced its decision in Criminal Appeal No. 265 of 2022 on 24th April, 2024 in dismissing the appellant for being incompetent. And the application at hand was filed on 21 May, 2024. Hence, the applicant instituted the application herein after the lapse of almost 28 days. The reason for the delay furnished by the applicant is that he utilised the time in the preparation of the pleadings of the application herein. I find 28 days delay in filing the pleadings unreasonable in the circumstances of this case. It is the law in our jurisdiction that the applicant seeking grant of extension is obliged to account for each day of the delay. See the case of *Tanzania Local Government Workers Union (TALGWU) vs. Sospeter Gallus Omollo*, Civil Application No. 311/18 of 2022 (2013) TZCA 17486 wherein the superior Court reiterated thus: "Accounting for each day of the delay is the backbone of the application for extension of time". In the same vein, I find it pertinent to reiterate that one of the factors for consideration for grant of extension expounded in the case of *Lyamuya Construction Co. Ltd vs the Board of Registered Trustees of Young 7 Women Christian Association* (supra) is the length of delay not being inordinate. In my opinion, the delay of 28 days for instituting the application herein is inordinate and of which cannot be excused. Hence, I find that the applicant failed to account for the period of delay. As aforementioned, the applicant raised the plea of illegality as ground for grant of extension of time. It is settled law that illegality of the decisions sought to be challenged constitutes sufficient cause for grant extension of time notwithstanding failure on the part of the applicant to furnish reasons for delay. See the cases; *Mohamed Salum Nahdi vs. Elizabeth Jeremiah*, Civil Reference No. 14 of 2017, CA (unreported); *Principal Secretary, Ministry of Defence and National Services vs. Devram Valambhia* [1992] TLR 185; *FINCA (T) Limited & Another vs. Boniface Mwalukisa*, Civil Application No. 589/12 of 2018; CA (unreported). However, for the plea of illegality to stand, the alleged illegality should be on the face of the record. See the case of *Mathew Kitambala vs Robson Grayson & Another*, Criminal Appeal No. 330 of 2018 (2022) TZCA 572. In particular, in the case of *Lyamuya Construction Company Limited vs. Board of Registered Trustees of Young Women's Christian 8 Association of Tanzania*(supra) the Court stated: "Since every party intending to appeal seeks to challenge a decision either on points of law or facts, it cannot in my view, be said that in Valambhia's case, the Court meant to draw a general rule that every applicant who

demonstrates that his intended appeal raises points of law should, as of right, be granted extension of time if he applies for one. The Court there emphasized that such point of law must be that of sufficient importance and, I would add that it must also be apparent on the face of record, such as the question of jurisdiction; not one that would be discovered by a long-drawn argument or process.” [Emphasis added]. Having scrutinized the matters raised constituting the alleged illegality, I have the following observations: First; the alleged illegality of the decision of the subordinate court in criminal proceedings commenced against the applicant herein based on the applicant’s own plea of guilty was discussed and rejected by my learned brother Justice Kakolaki in Misc. Criminal Application No. 261 of 2021. He was of the view that the plea of guilty was 9 unequivocal and the purported illegality could only be discerned by the long- drawn argument or process. Hence, the same issue should not have been brought up once again to this very court which has already made a decision thereon. Secondly, the applicant alleged that the decision of this court sought to be challenged, in substance, disregarded the principal in that delay caused by the time spent in prosecuting the matter in court is a relevant factor. Admittedly, it is the law that the time spent in prosecuting another case is normally taken to be a technical delay of which the applicant is not obliged to account [Salvand K.A. Rwegasira vs. China Henan International Group Ltd, Civil Reference No. 18 of 2016, CA (unreported)]. However, it depends on the circumstances of the case. In the decision of this court which the applicant seeks to challenge, it was found that the applicant’s counsel failed to adopt the appropriate procedure of the law in taking legal action which amounts to negligence. It was concluded that negligence of the counsel has never been sufficient cause for grant of extension. This conclusion is what the applicant’s counsel alleges to amount to illegality. With due respect, I find the plea misconceived. It is a rule of law 10 developed in our jurisdiction that failure to take appropriate legal action and, or negligence of the counsel, have never been sufficient cause for grant of extension. This position is backed by the plethora of decided cases. See the cases; Umoja Garage vs. NBC [1997] TLR 109; Exim Bank (Tanzania) Ltd vs. Jacqueline Kweka, Civil Application No. 348/18 of 2020, CA (unreported); and William Shija vs. Fortus Masha [1997] TLR 213, among others. Thirdly, it was alleged that the decision of this court in that the applicant failed to furnish sufficient cause to warrant grant of extension contradicts the decision of this court in Misc. Civil Application No. 83 of 2021 of which found that the applicant established good/sufficient cause for grant of extension. Hence, the decision of this court amounted to illegality. This issue need not detain me as well. The previous decision in Misc. Civil Application No. 83 of 2021, in substance, was an order emanating from an uncontested application for extension of time to file revision proceedings. On the contrary, the later decision of this court in Misc. Criminal Application No. 261 of 2021 was given in full trial on the contested application for grant of extension of time within which to file an appeal from the impugned conviction by the 11 lower court. This court was not bound by its previous order for grant extension for filing revision proceedings. Needless to mention that the respective decisions were given on two and different causes of actions. In fine, I find that the applicant failed to advance sufficient cause to warrant grant of

extension sought. Accordingly, the application herein is hereby dismissed in its entirety.
So ordered. DATED at DAR ES SALAAM this 30th October, 2024. O. F. BWEGOGGE JUDGE 12

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/320583/source_file/527176466fa17cc3/MISC.CRIMINAL_APP_14136_HAJI_MSONGELA_Final.pdf..pdf
CASE PAGE	https://chat.esheria.ai/case-law/tanzania/haji-msongela-juma-v-republic-extensionoftime-tanzlii-2024

Prepared on 12 October 2026 · Esheria