

TANZANIA / JUDGMENT

t JACKSON MAHALI

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2 September 2024

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA MBEYA SUB-REGISTRY AT
MBEYA MISC. CRIMINAL APPLICATION NO. 22504 OF 2024 (Arising from Criminal Case No. 16 of
2023 of Resident Magistrate's Court of Songwe) JACKSON WATONDOKA
MAHALI..... APPLICANT Versus THE
REPUBLIC..... RESPONDENT

RULING

02nd September 2024 TIGANGA, J. This is an application for an extension of time to lodge the notice of and the petition of appeal out of time to this Court to challenge the decision of the Resident Magistrate's Court of Songwe in Criminal Case No. 16 of 2023, delivered on 27th July 2024. The application was filed under section 361(1)(2) of the Criminal Procedure Act [Cap 20 R.E 2022], It was made by the chamber summons and supported by an affidavit of the applicant, Jackson Watondoka Mahali, in which he narrated the grounds for the application, mainly built on two main grounds: the applicant's sickness and the illegality of the decision sought to be challenged. i On the other hand, the Respondent, Republic opted not to oppose the application, therefore, they did not file the counter affidavit to oppose it. That led to the application to be uncontested. The brief background of the application is as follows, the Applicant was charged with three counts of forgery contrary to section 333c, 335(d)(1) and 337 of the Penal Code [Cap 16 R.E 2022], three counts of uttering false documents under section 342 and 337 of the same law and three counts for giving false information to a person employed in the public service contrary to section 122(a) of the same law. In the end, after a full trial, the court was satisfied that the prosecution proved the offence in counts no. 1 to 3 of forgery, and counts No. 4 to 6 of uttering false documents he was thus convicted and having regard to so many mitigating factors, he was sentenced to the one-year conditional discharge and nullified the transfer of three vehicles to the name of the accused that is Mitsubishi Canter, No. T373 BBB, Toyota Landcruiser No. T 806 AML and T295 DGV make Toyota Nadia since on the ground that the registration was secured illegally. He was disgruntled by both, the conviction and sentence but before appealing to this court, he realised that he was out of time. He thus decided to file this application for extension of time. According to him, the 2 why he delayed is as contained in the affidavit filed in support of the application, namely the applicant's sickness and illegality in the decision sought to be challenged. As pointed out the respondent republic, did not oppose the application, hence this ruling. It is settled law that in the application for the extension of time, the applicant is obliged to advance

sufficient cause to warrant a grant of extension. The factors that the court needs to consider include, whether or not the application has been brought promptly; the absence of any or valid explanation of delay; lack of diligence on the part of the applicant; the applicant's ability to account for the entire period of delay; and the existence of a point of law of sufficient importance, such as the legality of the decision sought to be challenged. See the case of Lyamuya Construction Company Ltd v The Board of Registered Trustees of Young Women's Christian Association of Tanzania, Civil Application No. 2 of 2010, CAT at Arusha (unreported) among many others, in this respect. It is also trite law that, each day of delay has to be accounted for. See the cases; Bushiri Hassan vs. Latifa Lukio Mashayo, Civil Application No.3 of 2007, CAT (unreported), and John Ackley Matoi vs. 3 Khalid Bakari Kileo (Civil Reference No.6 of 2020) [2023] TZCA 6, among others, in this respect. In the case at hand, the delay is not so long, the judgment was delivered on 2nd July 2024 and the application was filed on 09th August 2024, the delay is thus tolerable. The application for extension of time has been done promptly. In my view, this is a valid case in which an extension of time can be granted it is also this reason that convinced the respondent Republic not to oppose the application. In fine, I find this application meritorious and grant it for the reasons given. The applicant is given 14 days within which to file both the notice of appeal and the appeal itself. It is accordingly ordered. DATED and delivered at MBEYA on the 02nd of September 2024. J. C. TIGANGA JUDGE 4

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