

TANZANIA / JUDGMENT

## JOHN HAYMORA

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA IN THE SUB - REGISTRY OF  
MANYARA AT BABATI MISCELLANEOUS CRIMINAL APPLICATION NO. 16544 OF 2024  
(Originating from Criminal Case No. 94 of 2020 the Resident Magistrate Court of Manyara at  
Babati) JOHN BURA HAYMORA..... APPLICANT VERSUS THE  
REPUBLIC..... RESPONDENT

## RULING

21st November - 11th December, 2024 Mwihambi, J In the Resident Magistrate Court of Manyara at Babati (trial court) the applicant, John Bura Haymora, was charged with two counts of corrupt transactions contrary to section 15 (1) (a) and (2) of the Prevention and Combating of Corruption Act, No. 11 of 2007 in which he was alleged to corruptly solicit and obtain the sum of TZS 50,000/- from one Hussein Adamu Darabuand. He was subsequently, on 31st August, 2021, convicted and sentenced to pay a fine of TZS 500,000/- or three years imprisonment for the first count and a fine of TZS 500,000/- or three years imprisonment for the second count, concurrently. Aggrieved with the decision, the applicant on 2nd September, 2021 filed notice of appeal i under section 361 (1) (a) of the Criminal Procedure Act [Cap. 20 R. E. 2019] but did not proceed with subsequent stages, hence this application for extension of time to file the appeal out of time. Before hearing of the application, the applicant raised a preliminary objection that the respondent's counter affidavit is incurably defective for having not being attested in contrary to section 8 of the Notaries Public and Commissioners for Oaths Act [Cap 12 R.E. 2019]. The preliminary objection was sustained and the counter affidavit was expunged from court records. The applicant was represented by Mr. Philbert Akaro, learned Advocate who submitted that after completion of the Criminal Case No. 94 of 2020 the applicant fell ill and in the process of treatment he lost contact with the advocate who represented him in the trial court, and that after treatment he managed to employ a new advocate thus picking up with the appeal process. The learned advocate further submitted that the application does not account for the days delayed however the motive behind the intended appeal is to move this Court to deliberate and decide upon illegality that taints the judgment on the Criminal Case No. 94 of 2020. Mr Akaro argued that the intended appeal is based on the following grounds: 2

1. That, the Judgement of the trial court is tainted with illegality as the trial court raised and answered issues which led to conviction suo motto without affording parties opportunity to be heard.
2. That, the judgment and consequent conviction were tainted with illegality for being based on exhibits illegally procured.
3. That, the trial court grossly erred in law convicting the applicant on matters not backed by evidence on record rendering the entire judgment illegal. Mr. Akaro argued that these are serious triable issues and this Court will get an opportunity to determine and decide upon if the applicant is availed necessary opportunity to file the appeal. The learned advocate invited this Court to visit the Court of Appeal decision in the case of the Principal Secretary, Ministry of Defence and National Service v. Devram Valambhia [1992] TLR 185 at page 188 quoted in another Court of Appeal case sitting in DSM that is Civil Application No. 450/17 of 2021, Ally Salum Said (Administrator of estate of late Antar Said Kleb) v. Iddi Athumani Ndaki at page 20, in which it was stated that: "We are of the considered opinion that the learned Judge ought to have exercised his discretion judiciously to consider even the ground of illegality which was also pleaded by the appellant because "sufficient reason" does not only entail reasons of delay, but also sound reasons for extending time..." The Court of Appeal went on to state that: 3 "This Court in its recent decision in Attorney General v. Emmanuel Marangakisi and 3 Others, Civil Application No. 138 of 2019 (unreported), again echoed the position, that despite failing to account for the delay, the Court can exercise its discretion and extend time applied, once there is illegality claimed, that is a sufficient cause to warrant the grant of the application." The learned advocate further argued that in Mary Rwabizi T/A Amuga Enterprises v. National Microfinance PLC, Civil Application No. 378/01 of 2019, the Court of Appeal directed itself on whether the illegality is apparent on the face of record and stated that "the error in the judgment of the Court has made the decision to be illegal, is a serious matter which deserves the attention of the Court on review. I think the question of the existence of real or perceived illegality in judicial proceedings of the final court, like in this case, is not one of the issues to be taken lightly." He summed up with a prayer for this Court to follow the footsteps of the Court of Appeal in the cited cases to see the importance of availing opportunity to the applicant to file an appeal out of time so that this Court can see particulars of alleged illegalities and find out whether there is merit in the intended appeal or not. This application is made under section 379 of the Criminal Procedure Act [Cap. 20 R. E. 2019] CPA. However, this section refers to section 4 378 which deals with a situation where the Director of Public Prosecution is dissatisfied with an acquittal, finding, sentence or order made or passed by a subordinate court and wants to appeal to the High Court. It reads: 379.-(1) Subject to subsection (2), no appeal under section 378 shall be entertained unless the Director of Public Prosecutions or a person acting under his instructions-
  - (a) has given notice of his intention to appeal to the subordinate court within thirty days of the acquittal, finding, sentence or order against which he wishes to appeal and the notice of appeal shall institute the appeal; and

- (b) has lodged his petition of appeal within forty-five days from the date of such acquittal, finding, sentence or order; save that in computing the said period of forty-five days, the time requisite for obtaining a copy of the proceedings, judgment or order appealed against or of the record of proceedings in the case shall be excluded.
- (2) The High Court may, for good cause, admit an appeal notwithstanding that the periods of limitation prescribed in this section have elapsed, (emphasis is mine) I think the proper provisions for the application at hand is section 361
- (1) (a) which refers to section 359 of the CPA as follows: 5 361.-(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- fa) 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, 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. Section 359 of the CPA referred to in section 361 (1) of the CPA in its totality provides for an opportunity to any person aggrieved by any finding, sentence or order made or passed by a subordinate court other than a subordinate court exercising its extended powers, to appeal to the High Court. I will waive this wrong citation on the basis of Registered Trustees of Baraza Kuu la Jumuiya ya Waislamu Tanzania v. Registered Trustees of the National Muslim Council of Tanzania (BAKWATA), Civil Application No. 480/08 of 2024. In this case quoted in Said Rashid Hassan v. Republic, Misc. Criminal 6 Application No. 19993 of 2024, the High Court of Tanzania at Iringa at (unreported), the Court of Appeal held that: "It is, I think settled position of law held by the Court in many cases without citing any, that wrong citation of an enabling provision or non-citation is not fatal if the court is clothed with powers to grant the relief sought". In the present application, the applicant seeks extension of time to file his appeal against the decision in Criminal Case No. 94 of 2020 the Resident Magistrate Court of Manyara at Babati, and this Court is vested with power under section 361 (2) of the CPA to admit the said appeal. The catch words in section 361 (2) is good cause, which has been insisted in a number of cases explained in a number of cases such as Kalunga and Company, Advocates v. National Bank of Commerce Limited, [2006] TLR 235. The case of Benjamin Amon
- v. Republic, Criminal Application No. 106/11 (2018) the Court of Appeal provided four factors for a court to consider in deciding whether there is a good cause. That is, the applicant must account for all the period of delay, the delay should not be inordinate, the applicant must show diligence, and not apathy, negligence or sloppiness of the action that he intends to take and lastly if the court feels that there are other sufficient reasons, such as existence of a

point of law on decision sought 7 to be challenged. In addition, in the case of the International Airlines of the United Arab Emirates v. Nassor Nassor Civil Application No. 569/01 of 2019 CAT (unreported) cited in Mpoki Lutengano Mwakabuta v. John Jonathan (As legal representative of the late Simon Mperasuka Deceased) Civil Application No. 566/01 of 2018 (both unreported) it was held that; "it is settled that in an application for enlargement of time, the Applicant has to account for everyday of delay involved and that failure to do so would result in dismissal of the Application." Back to the application at hand, the reason for delay is said to be illness of the applicant. We have various authorities in similar situations such as the case of Shefire v. Omary Ally [1992] TLR 245, in which the Court of Appeal held that; '77/ health without elaboration cannot be good ground for extension of time after delay of five months" On the other hand, I have in mind the learned advocate's submission when he admitted that the application does not account for period of delay, however argues that the judgment in which the applicant intends to appeal against is clothed with illegality and therefore prays this to be regarded as a good cause hence moving this Court to grant extension of 8 time to file the intended appeal. I have also in mind the statement in the case of Martin Jacob @Milla v. Republic, Criminal Appeal 434/2021(2024) TZCA 447 that: "it is better to a acquit 100 guilty people than to convict one innocent individual" In the spirit of Ally Salum Said (supra) and Mary Rwabizi (supra) I think it is important for this Court to be availed an opportunity to explore the alleged illegality in decision of the Criminal Case No. 94 of 2020 and deliberate on it. Given the above, I find and hold that the applicant has established a good cause meriting the Court to exercise its discretion to grant extension of time sought by the applicant. The application is hereby granted and the applicant is given a period of thirty days to file the appeal. DATED at BABATI this 11th day of December, 2024. N.J. MWIHAMBI JUDGE 9 COURT: Ruling delivered today, 11th day of December, 2024, in the presence of the applicant, John Bura Haymora. B/C Miss Fatina R. Haymale (RMA) present. N.J. MWIHAMBI JUDGE 10

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