

TANZANIA / JUDGMENT

Jacobo Ruling

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Page 1 of 8 IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA GEITA SUB
REGISTRY AT GEITA MISC. CRIMINAL APPLICATION NO. 30882 OF 2024 (Arising from Criminal
Case No. 38324 of 2024 of the District Court of Chato) JONAS
JACOB..... APPLICANT VS THE
REPUBLIC.....RESPONDENT

RULING

Date of last Order: 14/11/2024 Date of Ruling: 21/11/2024 MWAKAPEJE, J.: The applicant, Jonas Jacob, has approached this Court through chamber summons, invoking the provisions of section 361(2) of the Criminal Procedure Act, Cap. 20 R.E. 2022, to request an extension of time for the submission of both a notice of appeal and an appeal beyond the stipulated statutory period. The application is supported by the applicant's sworn affidavit. The origin of this application stems from Criminal Case No. 38324 of 2024, which was decided before the District Court of Chato. On 31/11/2023, the applicant was found guilty and sentenced to three years of imprisonment for the offences of criminal trespass contrary to section 299(a) and (b) of the Penal Code, Cap. 16 R.E. 2019 and being found in possession of a monofilament net in the Rubondo National Park contrary to Regulation 66(1)(a) and (4) of the Fisheries Regulations GN. No. 308 of 2009.

Dissatisfied with the verdict and sentence, the applicant attempted to file an appeal but was hindered by the period of limitation, hence prompting this application. In his affidavit, the applicant asserts that he was not informed of his right to appeal at the time of his conviction nor during his confinement at the District Court of Chato and Chato Prison, respectively. He further states that even after being transferred to Geita Prison on 09/05/2024, he was unaware of his appellate options and only received copies of the judgment and proceedings on 16/08/2024. Consequently, the applicant requests the Court to exercise its discretion and grant an extension of time for filing a notice of intention to appeal and an appeal. The Respondent did not submit a counter-affidavit. As a result, the Court permitted them to present arguments solely on points of law at the hearing. During the application hearing, the applicant appeared in person without legal representation, while Mr Ipyana Mwantoto, State Attorney, represented the respondent, the Republic. Page 3 of 8 In his submission, the applicant contended that following his conviction by the Chato District Court, he was briefly incarcerated in Chato Prison before being swiftly transferred to Geita Prison within a week. He further asserted that there was a delay in receiving the court proceedings and judgment timely. Despite being sentenced on 30/11/2023, he only

obtained the relevant documents in July 2024. The applicant informed the court that he was admitted to Geita Prison on 04/12/2023 and carried out assigned tasks throughout his time in confinement while consistently reminding the admissions office about the pending copies of the proceedings and judgment. He was assured that the necessary follow-ups were being conducted. Consequently, he applied in this court to grant his application. Conversely, Mr Mwantoto argued that the applicant failed to appeal timely due to his alleged non-receipt of the court proceedings. Nevertheless, he posited that it was incumbent upon the applicant to actively pursue the acquisition of those documents while still incarcerated in Chato Prison. Furthermore, he contended that the applicant had neglected to provide a detailed account of each day of the delay, as stated in the case of *Shabani Mrisho Dilunga v. Rajabu Saidi Mgonanze & Another* (Misc. Land Application No. 50 of 2023) [2023] TZHCLandD 16691 (25 July 2023). He Page 4 of 8 underscored the mandatory nature of accounting for every single day of delay. Consequently, Mr. Mwantoto opposed the application and urged for its dismissal. In his rejoinder, the applicant reiterated that the delay resulted from his transfer from Chato Prison to Geita Prison, where they spent four days. He stressed that the primary cause of the delay was the belated receipt of the court proceedings and judgment. After considering the submissions made by the parties, the central issue under consideration pertains to whether the applicant has demonstrated sufficient cause for seeking an extension of time to file a notice of appeal and an appeal out of time. It is imperative to underscore that the fundamental requirement for the success of such an application lies in the applicant's ability to establish a good cause. The criteria constituting good cause, warranting the court's discretion to extend the limitation period, have been delineated in various case laws, including but not limited to *Lyamuya Construction Co. Ltd v. Board of Trustees of Young Women's Christian Association of Tanzania*, Civil Appeal No. 2 of 2010, *Tanga Cement Company Limited v. Jumanne D. Masangwa & Another*, Civil Application No. 6 of 2001, and *Ludger Bernard Nyoni v. National Page 5 of 8 Housing Corporation*, Civil Application No. 372/01 of 2018 (all unpublished). The case of *Lyamuya Construction Co. Ltd v. Board of Trustees of Young Women's Christian Association of Tanzania* (supra) articulated these factors as follows: "(i) The applicant must account for the period delayed; (ii) The delay should not be inordinate; (iii) The applicant must show diligence and not apathy, negligence, or sloppiness in the prosecution of the action that he intends to take; (iv) If the Court feels that there are other sufficient points of law, i.e., illegality of the decision, ought to be challenged." Now, in the current application, the applicant argues that at the time the decision was issued on 31/11/2023, he was not apprised of his right to appeal until he was notified while in the Geita prison. Nevertheless, it has been established that ignorance of the law does not serve as a defence in extending the period of limitation. In the matter of *Hadija Adam v. Godbless Tumba*, Criminal Application No. 14 of 2013 (unreported), it was explicitly articulated that: "As regards the applicant's ignorance of the law and its attendant rules of procedure, I wish to briefly observe that such ignorance has never been accepted as a sufficient reason (see, for instance, *Charles Machota Salugi v. Republic*, Criminal Application No. 3 of 2011 (unreported)). [Emphasis Supplied] Page 6 of 8 Therefore, I do not concur that the applicant failed to act within the allocated time due to his lack of legal knowledge surpassing his capacity, as he is expected to possess the necessary knowledge. Nevertheless, in accordance with the authorities above, this rationale cannot serve as a valid justification for the

extension of time. Regarding the argument that the applicant delayed his actions because he was not furnished with the proceedings and judgment of the trial court, this court cannot entertain such a claim in the absence of evidence supporting it. As evident from the records, the applicant asserted that he received the documents above on 16/08/2024. Despite his assertion that he remained in Geita Prison until 04/12/2023 when he was transferred, a new fact and not pleaded, his affidavit states that he arrived at Geita Prison on 09/05/2024; during this period, there is no indication of any actions taken by the applicant. Furthermore, there is no mention of when he requested copies of the judgment until his transfer to Geita Prison, and no evidence proving that he received them on that specified date. One of the valid justifications to extend time, as per the principle set in the case of *Lyamuya Construction Co. Ltd v. Board of Trustees of Young Women's Christian Association of Page 7 of 8 Tanzania (supra)*, is for the applicant to demonstrate diligence rather than apathy, negligence, or carelessness in the pursuit of the intended legal action. In this instance, the applicant displayed insufficient diligence in promptly asserting his rights. Furthermore, even after allegedly receiving the copies above on 16/08/2024, as indicated in his affidavit, he failed to act until 30/10/2024, a delay of 76 days, without providing any justification for the delay, considering that in such applications, each day must be accounted for. It is the position of the law, therefore, that a delay of one day is fatal, especially where no sufficient reason for the delay is given. See the case of *Mwanahamisi Kiangi vs Coretha Kapingu*, Civil Appeal No. 2 of 1994 (Unreported). Additionally, in the case of *Hassan Bushiri v. Latifa Lukio Mashayo*, Civil Application No. 3 of 2007 (Unreported) as referenced in *Bruno Wenceslaus Nyalifa vs Permanent Secretary Ministry of Home Affairs & Another* (Civil Appeal No. 82 of 2017) [2018] TZCA 297 (14 December 2018), it was established that: "Delay, of even a single day, has to be accounted for; otherwise, there would be no point of having rules prescribing periods within which certain steps have to be taken". [Emphasis supplied] Page 8 of 8 Therefore, I do not concur with the assertion that the applicant failed to act promptly due to his lack of legal acumen exceeding his capabilities, given that he is expected to possess the necessary knowledge. Nonetheless, in accordance with the authorities above, this reason does not warrant an extension of time. Furthermore, the applicant failed to provide proof of when they requested copies of the decision in this application. Moreover, after receiving the same, they did not account for the delay of 76 days before filing this application. Accordingly, this ground is dismissed. Having determined that ignorance of the law does not constitute good cause for an extension of time, and in light of the applicant's failure to account for the delay period, the application lacks merit. It is, therefore, dismissed in its entirety for want of merit. It is so ordered. DATED at GEITA this 21st day of November 2024. G.V. MWAKAPEJE JUDGE

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