

TANZANIA / JUDGMENT

SEBASTIAN NANGAI

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA IN THE SUB-REGISTRY OF
MANYARA AT BABATI MISC. CRIMINAL APPLICATION NO. 26412 OF 2024 (Originating from
Economic Case No. 120 of 2023 before Babati District Court) SEBASTIAN
NANGAI..... APPLICANT VERSUS
REPUBLIC..... RESPONDENT

RULING

11th November & 10th December, 2024 KAMUZORA, J. The applicant brought this application praying for extension of time to file an appeal to this court. The application was brought under section 361(2) and 392A (2) of the Criminal Procedure Act [CAP 20 RE 2022], (the CPA) and supported by an affidavit sworn by the Applicant. The reason for delay advanced in the affidavit is that after conviction and sentenced by the trial court, he was transferred to Kiteto prison and there was delay in serving him with copies of proceedings and judgment thus, was unable to appeal on time. He also annexed the affidavit of Babati prison officer who supported the fact that the applicant was transferred to Kiteto prison after the decision was made. The Respondent filed counter affidavit and Page 1 of 6 generally contested the application. On the date scheduled for hearing of application, the Applicant appeared in person while Ms. Blandina Msawa, learned State Attorney appeared for the respondent, Republic. In his affidavit and submission in support of application, the applicant claimed that he delayed in filing an appeal because after he was sentenced by the trial court on 15/11/2023, he was transferred to Kiteto prison and later on 30/07/2024 he was transferred back to Babati prison. That, he was also not supplied with copies of judgment because when the same was sent to prison he was already transferred and the prison officer never sent him his copies. He explained that he was convicted on 03/11/2023 but he received his copies in July, 2024 when he was already out of time for lodging an appeal. He prayed for extension of time so that he could appeal against the decision of Babati District Court. In reply, Ms. Blandina Msawa, learned state attorney adopted the counter affidavit and submitted that the applicant had not adduced sufficient reason for the delay in filing an appeal. She argued that the applicant was unable to explain why he did not file an appeal before he was transferred to Kiteto or after his return to Babati. That, the prison officer has indicated only two dates thus, other dates were not accounted by the applicant to wit, the date before he was sent to Kiteto and

after he returned to Babati. That, the applicant has not explained as what he was Page 2 of 6 doing for the period of two months before he was sent to Kiteto and after he was brought back to Babati. She referred the case of Benjamin Amon Vs. Republic, Criminal Appeal No 106/11 of 2018 TanziLii, [2020] TZCA, 335 on the requirement to account for each day of delay. She was of the view that, since the applicant has not accounted for each day of delay, the application should be dismissed. In a brief rejoinder the applicant added that he was transferred within one week after he was convicted and he had no copies. That, he was supplied with copies after he returned to Babati in July and that is when he sought for help from admission office to prepare this application. I have considered the pleadings and submissions from the parties and the applicable law. Section 361 (2) of the CPA which was used by the applicant to move this court in granting the application reads; 361 (2) The High Court may, for good cause, admit an appeal notwithstanding that the period of limitation prescribed in this section has elapsed. [Emphasis added]. The question is whether the applicant has shown good cause for extension of time. Good cause has been defined in number of cases, see for instance the case of Lyamuya Construction Company Limited Vs. Board of Registered Trustees of Young Women's Christian Association of Tanzania, Civil Application No. 2 of 2010 (Unreported) Page 3 of 6 and the case of Benjamin Amon Vs. R (supra) cited by the learned State Attorney. In the latter case, the Court of Appeal reiterated its prior set factors for consideration on whether good cause has been shown;

- i. The Applicant must account for each day of the delay. ii. The delay must not be inordinate. Hi. The Applicant must show diligence and not apathy, negligence or sloppiness of action that he intends to take. iv. If the court feels that there are other sufficient reasons such as existence of point of law of sufficient importance, such as illegality of the decision sought to be challenged. In this application, apart from the affidavit of the Applicant and the prison officer's affidavit, the applicant did not annex any other document to substantiate his claim. The record shows that the decision which he intends to challenge was delivered by the district court on 31/10/2023, no notice of intention to appeal was annexed to see if he intended to appeal. This application was filed before this court on 13/09/2024 almost 11 months after the decision was made. His reason for not filing appeal all that time is that he was transferred to Kiteto and his copies of judgment and proceedings were not sent to him. I do not find the applicant's reasons as strong to convince this court to believe that he had good reason for delay. I agree with the arguments by the learned State Page 4 of 6 Attorney that transfer of the prisoner from one prison to another cannot in itself, stand as a good reason for failure to appeal on time. The prisoners are not barred from filing the appeal from any prison thus, being transferred to Kiteto is not by itself, a good reason for failure of the Applicants to file the appeal unless the Applicants offers further explanation how such transfer prevented him from filing the appeal. In his affidavit, the applicant blamed the prison officer for delaying in sending him his copies after he was transferred to Kiteto. The prison officer also admitted in his affidavit that they delayed in sending the copies to the applicant for there was misplacement of applicant's documents at admission office. Although the learned state attorney argued that the applicant did not account for the period before transfer to Kiteto, the prison officer admitted absurdly that the applicant's documents

were misplaced along with other documents at their admission office. In fact, the prison officer admitted negligence for he never stated any effort made to ensure that the applicant received his documents on time. It was expected for the diligent officer to have at least requested for new documents from the court upon discovering that the prisoner's documents were misplaced by his office but, that was not done. The question is whether the applicant should be blamed for what happened. I had a deep thinking of the situation and in my considered Page 5 of 6 view, I find that the circumstance of this case will entitle the applicant the benefit of doubt. The application is therefore granted and the applicant is allowed to file his appeal within 21 days from the date of this ruling. DATED at BABATI this 10th day of December, 2024. D. C. ZORA JUDGE Page 6 of 6

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