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LEGAL NEWS

19 June 2024



Court of Appeal Guides on Timelines in Challenging Conviction and Sentence under Plea Bargaining

In Criminal Appeal No. 498 of 2022, the Court of Appeal (the Court) makes a case for the applicability of the then 60-day rule where there is a lacuna in law on the time limit to file civil or criminal applications in the High Court. The 60-day rule was developed and used by the Court at the time the Court of Appeal Rules lacked provisions relating to filing revision and review applications.

Background of the Case

Following a plea bargaining agreement registered on 25 August 2020 by the High Court, the Appellants and other persons were charged with occasioning loss to a specified authority. They were convicted following their plea of guilty and sentenced to pay a fine of TZS 1M or six months imprisonment on default. They were also ordered to pay TZS 1.5B compensation for the loss caused. On 30 March 2022, the Appellants, based on section 14(1) of the Law of Limitation Act (the LLA), applied for an extension of time to apply to set aside the conviction, sentence and orders as per section 194G of the Criminal Procedure Act (the CPA). The ground for their application related to the inaction of the High Court to supply them with a copy of the proceedings within time. The High Court dismissed their application for failing to establish sufficient cause for granting an extension of time as prayed. The Appellants decided to lodge an appeal to challenge the decision of the High Court on the ground that the trial court erred in law in applying the provisions of the LLA in their application. The issue before the Court was, among others, whether the trial court was clothed with jurisdiction to determine the application for an extension of time to set aside the conviction and sentence based on section 14(1) of the LLA.

Arguments Raised by the Parties

The Appellant's counsel argued that it was an error for the High Court to base its decision on the LLA which was inapplicable to criminal proceedings under section 43(a) of the LLA (Said Shaibu Mwigambo vs. R, Criminal Appeal No. 420 of 2021). He further contended that section 194(G) of the CPA does not provide for a specific time limit for the application to set aside conviction and sentence arising out of a plea bargaining agreement obtained involuntarily or by misrepresentation.

While acknowledging that the LLA does not apply to criminal proceedings as per section 43(a) of the LLA, the State Attorney argued that it is

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ECRA Attorneys is a modern and full-fledged law firm based in Dar es Salaam, Tanzania. It is comprised of qualified legal hulks with professional experience of more than a decade in a range of areas of their expertise.

ECRA Attorneys offers professional services in various areas of the law ranging from Taxation (both tax litigation and tax advisory); Corporate; Employment; Immigration; Intellectual property; Litigation, Arbitration and Regulatory; Engineering, Procurement and Construction (EPCs-related Services); Banking and Project Finance, Real Estate; Capital Market and Securities; Oil and Gas, Mining Law; Competition Law; Telecommunications and ICT Law; Payment Systems Law; Insurance Law and International Trade Law and Financing.

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improper to conclude that the trial court was not clothed with jurisdiction to determine the application for extension of time simply because the Appellants cited a wrong provision of the law. He contended that the Appellant should not be allowed to benefit from their wrong. He argued further that the Appellants' complaints are on plea bargaining based on section 194(G) of the CPA where no specific time limit is set. Thus, since the application was lodged in a court with competent jurisdiction to grant the sought orders, it was in the position to determine it.

Determination of the Issues and Decision of the Court

The Court confirmed the position that it is an indisputable fact that section 14(1) of the LLA is inapplicable to criminal proceedings as per section 43(a) of the LLA. Moreover, section 194(G) of the CPA does not provide a time limit to lodge an application to set aside convictions and sentences emanating from a plea bargaining agreement wrongly obtained. At this juncture, the Court went ahead to determine what happens if relevant laws do not provide time limits to lodge certain applications before the High Court.

The Court held that where a period for filing an application, be it criminal or civil, is not provided by any specific law, then the time limit for applying is 60 days. This time limitation was fixed by the Court of Appeal regarding revision and review when there were no specific provisions in the Court of Appeal Rules, 1977 (DPP vs. Prosper Mwalukasa, (2003) TLR 34). The Court went on to note that, from that jurisprudence, the period of limitation fixed by the Court for an application of a criminal nature for which the limitation is not provided should also apply to the applications before the High Court.

Finally, the Court held that, even though the High Court's decision was founded on the LLA, it was not prevented from hearing the Appellants' motion for an extension of time. Using the 60-day rule, it was clear that the Appellants were out of time. Thus, the major issue for the trial court was whether the Applicants had adequate reasons to warrant the delay. The Court exercised its revisionary jurisdiction and determined that, based on the records of appeal, the Appellants' delay in filing their application was attributable to the court's failure to provide them with a copy of the proceedings. Consequently, the Court allowed the appeal and granted an extension of time of 30 days.

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