

IN THE COURT OF APPEAL OF TANZANIA

AT MWANZA

CORAM: NYALALI, C.J.

CRIMINAL APPLICATION NO. 1 OF 1986

In the Matter of an intended Appeal

Between

EMMANUEL KANYOGOZI. APPLICANT

And

THE REPUBLIC. RESPONDENT

(Application for Extension of time from the Judgment and Conviction of the High Court of Tanzania at Tabora) (Sisya, J.) dated the 12th day of November, 1976

in

Criminal Sessions Case No. 7 of 1976

O R D E R

NYALALI, C.J.:

This matter demonstrates how injustice is sometimes perpetrated through malfunctioning in the administration the legal system and the need for having some monitoring procedure within the system to avoid such malfunctioning. The matter concerns an application under Rule 8 of the Tanzania Court of Appeal Rules, 1979 for extension of time to appeal to this Court. The Appellant was convicted and sentenced to suffer death by hanging after a full trial for the charge of murder. The judgement of the High Court was given on 12th November, 1976. Apparently he was aggrieved by the conviction and sentence and under Rule 61 he was required to give Notice of Appeal within fourteen days of the date of the decision of the High Court but he did not do so until 12th May, 1986, that is, nine and a half years late. At his trial, the Appellant was legally represented on a Dock brief, by Counsel assigned by the Court from the Tanzania Legal Corporation. The established practice of automatically making an appeal against conviction and sentence in a homicide case defended on a dock brief, was not followed in respect of the Appellant. His predicament only came to light in the course of inquiries by the Office of the Chief Justice concerning the state of cases decided by the High Court but were

pending appeal to the Court of Appeal. As a result of such inquiries, Counsel was assigned by the Court to represent the Appellant, hence this application. Under the provisions of section 10 of the Appellate Jurisdiction Act, 1979 and Rule 44 of the Rules of this Court, this Court undoubtedly has jurisdiction to entertain this application in a criminal matter without having the application considered first by the High Court.

Under Rule 8 the Court is empowered to extend the period limited by the Rules for the doing of any act but only where sufficient reason exists. The question arises therefore whether in the present case, there is sufficient reason for allowing the intended appeal to be filed after a delay of nine and a half years. Mr. Kahangwa, Learned Advocate, holding the brief for Mr. Kwikima, Learned Advocate, has submitted in effect that two good reasons exist in support of a decision granting such extension. Firstly, the Application is not to blame for the delay since he was entitled to assume in a dock brief case, that the Counsel assigned by the Court would honour the established practice of automatically appealing to this Court without the necessity of getting instructions from the applicant. Secondly, the intended appeal raises a very important point of law concerning the admissibility of a confession which, though admitted without objection, required a trial-within-a trial to determine its admissibility.

Mr. Tendwa, Learned State Attorney who appeared for the Republic does not oppose the application. I agree with Mr. Kahangwa that the failure by trial defence Counsel on a dock brief to file the automatic appeal under established practice is sufficient reason for extending the time of appealing. I also agree that there is an important legal issue of admissibility of a confession and since the absence of such a confession could affect the conviction, I am satisfied that the issue amounts to sufficient reason for


...../3.

allowing the appeal to be made out of time. Since the intended Notice of Appeal and the Memorandum of Appeal are ready and before the Court, I hereby allow the application as prayed.

DATED at MWANZA this 25th day of June, 1986.

F. L. NYALALI
CHIEF JUSTICE

I certify that this is a true copy of the original.


(J. H. MSOFFE)
DEPUTY REGISTRAR