

**IN THE COURT OF APPEAL OF TANZANIA
AT ARUSHA**

CRIMINAL APPLICATION NO. 5 OF 2010

AMIR ATHUMAN.....APPLICANT

VERSUS

THE REPUBLIC.....RESPONDENT

(Application for extension of time to file review from decision of the Court
of Appeal of Tanzania at Arusha)

(Kaji, J.A, Kileo,JA, And Kimaro, JA,)

Dated 23rd, 24th day of April, 2004
in

Criminal Appeal No.7 of 2007

RULING

27th & 30th September, 2011

NSEKELA, J.A.:

The applicant Amir Athuman was dissatisfied with the decision of a single Judge of this Court (Nsekela, J.A.) in Criminal Application No. 2 of 2008, **Amiri Athuman v The Director of Public Prosecutions** (unreported) dated 16//2/2010. It was an application for extension of time to file an application for Review. The Court struck out the application on a preliminary point of law raised by the respondent Republic since the applicant had incorrectly invoked section 361 of the Criminal Procedure Act,

Cap 20 RE 2002. It is against this decision that the applicant filed a Notice of Motion under Rule 48 of the Court of Appeal Rules, 2009 (Court Rules) apparently seeking an extension of time to file an application for Revision in Criminal Appeal No. 209 of 2006.

The applicant appeared in person, unrepresented. He adopted the contents of his affidavit in support of the Notice of Motion. Paragraphs 3,4 and 5 are in the following terms:-

"3. That I wasn't satisfied by the decision reached by the said Court of Appeal of (T) at Arusha but didn't know the procedures that lay after the said Court.

4. That I was later advised by the visiting Judicial Officers that if I was still aggrieved, I had a right of Revision.

5. That as I was preparing all necessary documents for Revision the Prisons typing equipment was out of order which marked a technical delay which was out of my ability".

In his brief elaboration of the contents of his affidavit, the applicant stated that he was dissatisfied with the decision of the single judge that struck out his application for extension of time to file the notice of appeal. The respondent Republic was represented by Ms. Javelin Rugaihuza, learned State Attorney. She briefly submitted that a single judge has no jurisdiction to hear and determine the current application. The matter had to be referred to the Full Court.

With respect, notwithstanding my sympathies with the applicant's, lack of knowledge of procedure before this Court, I am obliged to state the law as I see it. It is evident from the Notice of Motion filed by the applicant that he was dissatisfied with the decision of a single judge (Nsekela, J.A.) in Criminal Application No.2 of 2008. The application before the single judge was for extension of time to file notice of appeal. For reasons stated therein, the application was struck out. The applicant being dissatisfied with that decision, Rule 62 (1) of the Court Rules then came into play.

It provides as under:-

"(1) Where any person is dissatisfied with the decision of a single Justice exercising the powers conferred by Article 123 of the Constitution, he may apply informally to the Justice at the time when the decision is given or by writing to the Registrar within seven days after the decision of the Justice-

(a) In any Criminal matter, to have his application determined by the Court, or"


In the circumstances, I have no jurisdiction as a single Judge to hear and determine this application. It has to be heard and determined by the Full Court in terms of Article 123(a) of the Constitution of the United Republic of Tanzania read together with Rule 62 (1) (a) of the Court of Appeal Rules, 2009.

It is accordingly ordered.

DATED at ARUSHA this 28th day of September, 2011.

H. R. NSEKELA
JUSTICE OF APPEAL

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



E.Y. MKWIZU
DEPUTY REGISTRAR
COURT OF APPEAL