IN THE COURT OF APPEAL OF TANZANIA
AT MBEYA
(CORAM: RUTAKANGWA, J.A.,MBAROUK, J.A. And MASSATI, J.A.)

CRIMINAL APPEAL NO. 120 OF 2010

ATHUMANI SALIM .... APPELLANT

VERSUS

THE REPUBLIC .... RESPONDENT

(Appeal from the judgment/decision of the Resident Magistrates'
Court of Sumbawanga
at Sumbawanga)

(Dyansobera,PRM EJ.)

Dated the 19th day of May, 2009
In
Criminal Appeal No. 6/2009

JUDGMENT OF THE COURT

Date 24 & 29 June, 2011
MASSATI, J.A.:

The appellant was charged in the District Court of Mpanda, with

three counts of rape, causing grievous harm, and stealing, alleged to have

been committed in December, 2000. On August 8, 2001 he was convicted

as charged and sentenced to 30 years for rape, and 1 year imprisonment

for each of the remaining counts. After some preliminaries, his appeal in

the High Court was heard by Dyansobera, PRM (Extended Jurisdiction) who

dismissed it on June 19, 2009. He has now come before this Court for a

second appeal.

We have taken the trouble to travel through the relevant original records. Apparently, the appellant realized that he was late in filing his notice of intention to appeal against the District court judgment. So, on 27th October, 2008 he filed, in the High Court, a chamber application under section 361(2) of the Criminal Procedure Act, for extension of time in which to lodge the notice. This was assigned as Miscellaneous Criminal Application No. 19 of 2008. It is strange that although the official receipt stamp of the High Court in respect of the chamber summons was marked 19th August, 2008, it was signed by the District Registrar, two months later, on 27th October, 2008. Be that as it may, the application was "transferred" to Dyansobera PRM (JE) on 5th September, 2008 by the Judge, purportedly under section 45(2) of the Magistrates' Courts Act.

It was on the strength of this "transfer" order that Dyansobera PRM (EJ) proceeded to hear the said application whose ruling he delivered on 13th November, 2008 granting the prayers. Pursuant to this leave, the appellant filed his notice of intention to appeal in the High Court on 15th November, 2008. Then, on 11th March 2009, the learned judge at Sumbawanga, "assigned" the appeal to Dyansobera PRM (EJ). It was on

There is no dispute here that Dyansobera PRM, had extended jurisdiction conferred upon him under section 45(1) of the Magistrates' Courts Act. But what was filed in the High Court that came up for assignment before the learned Judge was not an appeal, but an application under section 361(2) of the Criminal Procedure Act. As held by this Court, a Principal Resident Magistrate with Extended Jurisdiction has no jurisdiction to hear and determine an application for enlargement of time to lodge an appeal filed in the High Court under section 361(2) in terms of section 45 of the Magistrates' Courts Act. (See **BENECA MATHAYO AND OTHERS v. R.** Criminal Appeal No. 251 of 2006 and **SELEMANI GABRIEL v. R**. Criminal Appeal No. 201 of 2007 (both unreported). It follows therefore that the learned Principal Resident Magistrate (Extended Jurisdiction) who granted extension of time in this case had no jurisdiction to do so. Therefore all the proceedings and ruling relating to that application must be vitiated. In exercise of our powers of revision under section 4(2) of the Appellate Jurisdiction Act, we quash the same.

After the purported enlargement of time for lodging the appeal and upon the appeal being filed, on 15th November 2008, again the learned resident judge in Sumbawanga "assigned" the appeal to be heard by the

to that court for it to first determine the application before proceeding to rehear the appeal should it deem fit to enlarge time.
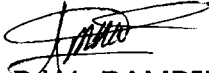
It is so ordered.

DATED at **MBEYA** this 27th day of June, 2011.

E.M.K. RUTAKANGWA
JUSTICE OF APPEAL

M.S. MBAROUK
JUSTICE OF APPEAL

S.A. MASSATI
JUSTICE OF APPEAL

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

P.W. BAMPIKYA
SENIOR DEPUTY REGISTRAR
COURT OF APPEAL