

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

MZA. CRIMINAL APPLICATION NO. 3 OF 2011

CHARLES MACHOTA SALUGI.....APPLICANT

VERSUS

THE REPUBLIC.....RESPONDENT

**(Application for extension of time to file Notice of Appeal out of time
from the decision of the High Court of Tanzania at Mwanza)**

(Nyangarika, J.)

**dated the 30th day of August, 2010
in**

Misc. Criminal Application No. 46 of 2008

RULING

1 & 5 March 2013

MASSATI, J.A.:

The applicant's appeal against conviction and sentence for robbery with violence by Serengeti District Court was dismissed by the High Court Mchome, J. (as he then was) on 31/12/2004. He was not present when the judgment was delivered. When he came to learn of the existence of the decision, and filed his notice of intention to appeal to this Court, his criminal appeal No. 88 of 2005 was struck out on the ground that it was filed out of time. He went back to the

High Court and instituted Misc. Criminal Application No. 46 of 2008 to seek extension of time. There it was struck out by Nyangarika, J. on 30/8/2010. On the 13th January, 2011, the present application was lodged.

In this application, the applicant is seeking for extension of time within which to file a notice of appeal. From my quick perusal of the notice of motion, I think, the impugned decision is that of Nyangarika, J. of 30th August 2010, which, as shown above, struck out his application for extension of time.

According to the applicant's affidavit the major grounds are that the judgment was delivered in his absence, and his application was wrongly dismissed on account of resjudicata, instead of determining it on merit.

In her affidavit in reply, Ms Revina Tibalengwa, learned State Attorney who appeared for the respondent, admitted that although the appellant was absent when the judgment of the High Court was

delivered on 31/12/2004, he was nonetheless informed about the decision in time. She submitted in Court that he became aware of the decision on 26/1/2005, but instead of filing an application for extension of time he filed an appeal in this Court, which was struck out for being filed out of time. The applicant was therefore dilatory and negligent and did not advance sufficient grounds for extension of time. She therefore prayed that this application be dismissed too.

There is one thing I have to make clear in my ruling. As I understand it this is not an application for extension of time by way of a second bite (so to speak) against the decision of Mchome, J. as Ms Tibalengwa seems to look at it, but rather, it is an application for extension of time in which to file a notice of appeal against the decision of Nyangarika J. dated 30/8/2010.

I also understand it to be the law, that where the High Court has rejected an application for extension of time in a criminal case, an aggrieved party may either appeal to this Court or apply for revision of that decision by this Court (See **DICKSON s/o**

MHAGACHI v R MZA Criminal Application No. 1 of 2004), (unreported) and that under rule 47 of the Court of Appeal Rules, 2009, this Court has jurisdiction to consider an application for extension of time in any criminal matter even if no such application has been made to the High Court first. Against this background, I will now proceed to consider the application which is before me.

Under rule 10 of the Court of Appeal Rules, 2009, time may be extended upon good cause being shown. The term "good cause" is not defined, but in **SHANTI v HINDOCHIE & OTHERS** (1973) EA. 207 the Eastern African Court of Appeal attempted to consider the term "sufficient reason" that was in use in rule 8 of the rules of the Court of Appeal for Eastern Africa, which was carried over in the Tanzania Court of Appeal Rules 1979 (rule 8). The defunct Court said:

"the more persuasive reason ... that he can show is that the delay has not been caused or contributed by dilatory conduct on his part. But that is not the only reason".

(See also **VERONICA FUBILE V THE NATIONAL INSURANCE CORPORATION & 2 OTHERS** Civil Application No. 168 of 2008 (unreported)).

In the present case if the applicant was aggrieved by the decision of Nyangarika, J. of 30/8/2010 and intended to appeal against it, and he could do so within 30 days under Rule 68(1) of the Court of Appeal Rules, 2009, why didn't he file a notice of appeal in the High Court, instead of rushing to this Court to file an application for extension of time. I say so, because from the notice of motion and affidavit that is in the record it is perfectly clear that he could have filed one by 27th September, 2010 when the affidavit was brought for attestation before the Resident Magistrate's Court Mwanza. By that time, he was still in time to file a notice of appeal. So from the facts there is no explanation why this essential step was not/could not taken in time except perhaps, from ignorance of law. Ignorance of law has never been accepted as a sufficient reason or good cause for extension of time.


For the above reasons, I think the application has failed to disclose a good cause for extension of time. I accordingly dismiss the application.

DATED at MWANZA this 1st day of March, 2013.

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