

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

(CORAM: RUTAKANGWA, J.A., KAIJAGE, J.A., And MUSSA, J.A.)

CRIMINAL APPLICATION NO. 5 'B' OF 2011

**1. MWEYA MAGANYA
2. KITEWO MGIGE
3. JUMANNE KYAHILA**

} **APPLICANTS**
VERSUS

THE REPUBLIC RESPONDENT
**(Application for Extension of time to lodge appeal to the High Court
of Tanzania
at Mwanza)**

(Sumari, J.)

**dated the 2nd day of November, 2010
in
H/C. Criminal Appeal No. 87 of 2010**

.....

RULING OF THE COURT

**6th & 11th December, 2013
KAIJAGE, JA.:**

From very scanty facts available in the Court record, we have been able to discern at least the fact that on 2/11/200, the High Court (Sumari, J.) sitting at Mwanza in Criminal Appeal No. 87 of 2010, made an order summarily rejecting the applicants' appeal from a decision of Musoma District Court in Criminal Appeal No. 444 of 2008. Subsequently, on 29/11/2012, the applicants lodged a joint Notice of Motion under Rule 10 of the Tanzania Court

of Appeal Rules, 2009 (the Rules) purportedly moving this Court for an order extending time within which "to appeal to the High Court out of time."

At the hearing, the applicants appeared in person, unrepresented. The respondent Republic was represented by Mr. Juma Saringe, learned State Attorney who did not resist the application.

In view of the nature of the present application, we are constrained to state, from the outset, that the same is highly misconceived and incompetent. Rule 10 of the Rules under which the present application has been brought, admit no application for extension of time within which to appeal to the High Court out of time. For the avoidance of doubt, Rule 10 of the Rules provides:-

*"R.10. **The Court may, upon good cause shown, extend the time limited by these Rules** or by any decision of the High Court or Tribunal, **for the doing of any act authorized or required by these Rules**, whether before or after the expiration of that time and whether before or after the doing of the act; and any reference in the Rules to any such time shall be construed as a reference to that time as so extended."*

Generally, the Rules govern appeals to this Court. Rule 10 of the Rules deals with applications for enlargement of time for the doing of any act authorized or required by the Rules in matters that have to come or to be done by this Court (See, **MARWA MASEKE V. R.**, Criminal Application No. 8

of 2011 (unreported). So, an application such as the present one, cannot be validly premised under Rule 10 of the Rules.

We are of the firm view that the applicants' application could have been validly entertained by the High Court under section 361(2) of the Criminal Procedure Act, Cap 20 R.E 2002 (the CPA) which provides:-

"S. 361(2) The High Court may, for good cause, admit an appeal notwithstanding that the period of limitation prescribed in this Section had elapse."

Considering the foregoing, it is evident that Rule 10 of the Rules cannot be resorted to as an alternative to section 361(2) of the CPA which confers the High Court with jurisdiction to extend time for instituting criminal appeals from subordinate courts to itself. Thus, in this case, applicants' application for extending time within which to institute their intended appeal ought to have been filed in the High Court for its determination.

However, we have taken note of the order dated 2/11/2010 in which the High Court dismissed the applicants' criminal appeal summarily. In case the applicants were desirous to impugn that order, they should have either appealed to this Court against it or applied for revision. (See, for instance, **DICKSON S/O MHAGACHA V.R.**, Criminal Appeal No. 1 of 2004 (unreported).

For the above reasons, we have found ourselves unable to grant, to the applicants, the order being sought in this application. We are similarly certain

that this Court has no jurisdiction to entertain the present application under Rule 10 of the Rules. Accordingly, we hereby strike it out.

It is so ordered.

DATED at MWANZA this 10th day of December, 2013.

E.M.K. RUTAKANGWA
JUSTICE OF APPEAL

S.S. KAIJAGE
JUSTICE OF APPEAL

K. MUSSA
JUSTICE OF APPEAL

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

