

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

**CRIMINAL APPLICATION NO. 10 OF 2014**

**CHACHA KICHELE NYAMHANGA..... APPLICANT**

**VERSUS**

**THE REPUBLIC ..... RESPONDENT**

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

**(Rwakibarila, J.)**

**dated the 10<sup>th</sup> day of September, 2010  
in  
Criminal Application No. 79 of 2009**

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**RULING OF THE COURT**

26<sup>th</sup> & 30<sup>th</sup> May, 2016

**LUANDA, J.A.:**

Basically this is an application for extension of time made by the applicant so that he may be allowed to file notice of appeal out of time. The applicant intends to challenge, according to the notice of motion, the decision/ruling of Rwakibarila, J. dated 10/9/2010. The application has been made under Rule 10 of the Court of Appeal Rules, 2009 (the Rules). The application is made by way of notice of motion supported by affidavits of the appellant and that of a Prison Officer one ASP Tibwakawa.

For reasons which I shall explain at a later stage in this ruling, I reproduce the affidavit of the applicant.

### **AFFIDAVIT**

Chacha Kichele @ Nyamhanga, earliest named applicant, male, adult, Tanzania citizen and Christian of sound mind, Doth HEREBY sworn and state as here under follows:-

- 1. That, I am applicant in this application and previously an accused person in the criminal case No. 1209 of 1999 of the District Court of Mwanza (now Nyamagana) where I (sic) convicted and sentenced to serve thirty years imprisonment from 12<sup>th</sup> day of December, 2000.*
- 2. That, on (sic) aggrieved by the District decision I appealed against the judgment to the (sic) court (T) Mwanza in Criminal appeal No. 49 of 2003 which (sic) dismissed on 20<sup>th</sup> of July 2005 thus the conviction and sentence was up hold.*
- 3. That, I was aggrieved by High Court decision, then I lodged the criminal appeal No. 223 of 2005 in the court of appeal which was struck out on 28<sup>th</sup> of July 2005 for being time barred.*

4. *That, on applying Misc. Criminal application No. 79 of 2009 to the high court (t) Mwanza, court exempted itself from determining the application rather dismissed the same on grounds that, a ruling of this court (dated 28<sup>th</sup> may, 2009) was res-judicate.*
5. *That I applied to this court a criminal application No. 7 of 2010 for revision of the High Court Ruling from the decision in criminal application No. 79 of 2009 where this court struck out it on 9<sup>th</sup> day of May, 2014 for it's (sic) in competent (sic) on citing(sic) law, hence the present application before the court.*
6. *That, the applicant believes that to avoid serious miscarriage of the ruling of the High (sic) of the ruling of the High Court needs to allow the application due to the fact that there are serious misdirection's (sic) on vital matters of law, on the serious misdirection on vital matters of law, on the part of his lordship, relating to the adjudication of an application scheduled before him as specified in the grounds to the Notice of Motion amongst many others.*

In his affidavit in reply, Mr. Hemedi Halidi learned State Attorney who also appeared in this application, resisted the application contending that the applicant did not give sufficient reason for the grant of the application.

When the application came for hearing, the applicant adopted the contents of his affidavit. He then prayed orally that his application be allowed. Responding, Mr. Halifani opposed the application saying the applicant did not show any good cause to enable the Court to grant the prayer.

In reply the applicant blamed the Incharge of Prison for failure to show the date his appeal was sent.

Before I go into the merit of the application, I wish to make one observation. It would appear the applicant attempted first to seek extension of time to file notice of appeal out of time and was refused. I say so because his affidavit does not come out clearly to have done that and he did not annex any decision to that effect. If that is the position, then this is another bite so to speak, after it was first refused by the High Court.

The big question which I asked myself is whether upon refusal to grant an extension to file notice of appeal out of time by the High Court, this Court has the authority to entertain the application as a second bite. I have travelled through the Rules as well as the Appellate Jurisdiction Act, Cap 141 RE 2002 (the Act), I was unable to locate anywhere.

On reading S. 11 of the Act together with Rule 10 of the Rules, my understanding is that the powers to grant an extension of time to file a notice of appeal out of time is the exclusive domain of the High Court. If the High Court refused to grant extension of time to file notice of appeal out of time, the correct and appropriate measure to take is to appeal against that order of refusal. What we share common between the court and the High Court subordinate courts exercising extended powers is in application for leave in that if leave is refused in the Courts below, the aggrieved party can knock the doors of this Court for a second bite as authorized by Rule 45 (b) of the Rules. There is no similar provision when it comes to an application for extension of time to file notice of appeal out of time. In view of the foregoing,

therefore, it is clear that neither the Appellate Jurisdiction Act nor the Rules, 2009 have sanctioned such course of action.

In **Philemon Mang'ehe t/a Bukene Traders V Gesso Herbon Bajuta**, Civil Application No. 32 of 2013 (unreported) a single Justice of this Court had expressed similar view, he said:-

*"Applications for extension time to file a notice of appeal and application to extend time to apply for a certificate on point of law are the exclusive domain of the High Court. The only avenue open to a party whose application for extension of time to file a notice of appeal if refused by the High Court is to appeal against such refusal under Rule 5(1) (c) after obtaining the necessary leave. The powers on notice of appeal and certificate on point of law granted under section 11 (1) of the Appellate Jurisdiction Act, Chapter 141 of the Laws, have been specifically excluded in Rule 45 (b) of the Court of Appeal Rules, 2009 and they cannot be "**read into**" the rules".*

Assuming that the applicant had the right to come to this Court on second bite, did he show good cause for the delay?

I have reproduced the entire affidavit of the applicant. He did not give any reason leave alone sufficient one. I entirely agree with Mr. Halfani that the applicant failed to give reasons for his delay.

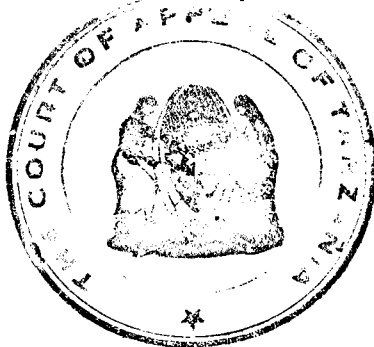
That said, the application is dismissed.

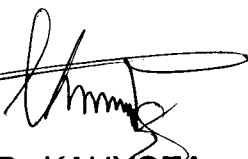
Order accordingly.

**DATED** at **MWANZA** this 28<sup>th</sup> day of May, 2016.

B. M. LUANDA  
**JUSTICE OF APPEAL**

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



  
J. R. KAHYOZA  
**REGISTRAR**  
**COURT OF APPEAL**