

**IN THE COURT OF APPEAL OF TANZANIA**

**AT MBEYA**

**(CORAM: LUANDA, J.A., MMILLA, J.A. And NDIKA, J.A.)**

**CRIMINAL APPEAL NO. 363 OF 2015**

**OSCAR PENDEZA ..... APPELLANT**

**VERSUS**

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

**(Appeal from the decision of the Resident Magistrate Court with Ext.  
Jurisdiction at Sumbawanga)**

**(Hon. W.P. Ndyasobera, SRM)**

**dated the 24<sup>th</sup> day of August, 2006**

**in**

**Criminal Appeal No. 10 of 2006**

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**ORDER OF THE COURT**

14<sup>th</sup> & 16<sup>th</sup> February, 2018

**LUANDA, J.A.:**

When this appeal was called on for hearing, the Court *suo motu* wished to satisfy itself as to the competency of the appeal. We did so because the record of appeal shows that the first appeal was entertained by W.P. Ndyasobera- Senior Resident Magistrate (as he then was) exercising his extended powers and dismissed it.

Following the dismissal of the appeal at that level, the appellant intended to lodge an appeal in this Court. But because he was late to do so, he first sought an extension of time in the High Court so as to enable him lodge a notice of appeal out of time. He lodged the application in that court by way of a chamber summons supported by an affidavit and it was taken out under Rule 47 of the Court of Appeal Rules, 2009 (the Rules).

In view of the clear provision of S. 11 (1) of the Appellate Jurisdiction Act, Cap. 141 RE 2002 (the AJA) the Court wished to know which is the proper court to seek such an extension of time on decision arising from Resident Magistrate's Court exercising extended jurisdiction. Further, whether Rule 47 of the Rules is the enabling provision for such an application.

Mr. Francis Rogers, learned State Attorney who represented the respondent/Republic, told us that Rule 47 of the Rules is not applicable. The appropriate provision is S.11 (1) of the AJA and that the High Court had no jurisdiction to entertain an application for extension of time to appeal to this Court from a decision of

subordinate court exercising extended powers. He went on to say, as such the notice of appeal is invalid and the appeal is incompetent. The same should be struck out. He prayed the Court to invoke its revisional powers as provided under S.4(2) of the AJA.

On the other hand, the appellant prayed to file a fresh application for extension of time.

S. 11(1) of the AJA is very clear. It empowers the subordinate court which it had exercised its extended powers to extend time for giving notice of appeal to appeal to the Court, of course if good cause is shown.

The section reads as follows:

*11(1) Subject to subsection (2), the High Court and, where an extension of appeal lies from a subordinate court exercising extended powers, the subordinate court concerned, **may extend the time for giving notice** of intention to appeal from a judgment of the High Court or of the subordinate court concerned,*

*for making an application for leave to appeal or for a certificate that the case is a fit case for appeal, notwithstanding that the time for giving the notice or making the application has already expired.*

In the instant case it was the High Court which extended time to file a notice of appeal out of time from a matter originating from a subordinate court in exercising its extended jurisdiction. It is clear that the powers to entertain an application for extension of time to appeal to the Court in matters arising from subordinate court with extended jurisdiction is the same subordinate court and not the High Court. Further, the enabling provision is the same S. 11(1) of the AJA and not Rule 47 of the Rules.

That said, the decision of the High Court is wrong. The High Court has no powers to grant extension of time in matter which had been entertained by subordinate court in the exercise of its extended jurisdiction. We agree with Mr. Rogers that the notice of appeal is invalid and renders the appeal incompetent.

Since, the appeal before us is incompetent, we strike it out.  
The appellant may file a fresh application for extension of time in the  
same subordinate court.

Order accordingly.

**DATED** at **MBEYA** this 15<sup>th</sup> day of February, 2018.

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

B.M. MMILLA  
**JUSTICE OF APPEAL**

G.A.M. NDIKA  
**JUSTICE OF APPEAL**

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

P.W. Bampikya  
**SENIOR DEPUTY REGISTRAR**  
**COURT OF APPEAL**