

**IN THE COURT OF APPEAL OF TANZANIA  
AT DAR ES SALAAM**

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

**CRIMINAL APPEAL CASE NO. 53 OF 2016**

1. KIFARU S/O JUMA KIFARU  
2. RAJABU S/O SHOMARI JUMA  
3. DICKSON S/O PHILIPO MDOE } ..... APPELLANTS

**VERSUS**

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

**(Appeal from the decision of the High Court of Tanzania  
at Dar es Salaam**

**(Twaib, J.)**

**dated the 29<sup>th</sup> day of July, 2013**

**in**

**Criminal Appeal No. 16 of 2013**

.....

**RULING OF THE COURT**

28<sup>th</sup> February & 6<sup>th</sup> March, 2018

**LUANDA, J.A.:**

The above named appellants namely, KIFARU S/O JUMA KIFARU, RAJABU S/O SHOMARI JUMA and DICKSON S/O PHILIPO MDOE along with two others, were jointly and together charged with two counts; to wit conspiracy to commit an offence and armed robbery. The appellants and those two others were convicted as charged. Surprisingly, the trial court

handed down a sentence of 30 years imprisonment for each of the appellants only and no sentence was passed in respect of the offence of conspiracy and that those two other persons who were charged along with the appellants were not sentenced at all and their fate is not known.

Be that as it may, the appellants were aggrieved by the conviction and sentence of the trial court. They unsuccessfully appealed to the High Court of Tanzania (Dsm Registry).

Still dissatisfied, the appellants had tried to appeal to this Court, by filing a joint notice of appeal which it turned out to be defective in that it did not disclose the names of all the intended appellants. The appeal was struck out. The appellants started afresh the process of appeal by seeking an extension of time in the High Court so that they file their notices of appeal out of time. They did so by way of a Chamber Summons supported by affidavits. It was taken out under Rule 47 of the Court of Appeal Rules, 2009 (the Rules). The High Court (Feleshi, J.) granted the application. Thus the appellants lodged this appeal.

When the appeal was called on for hearing, the Court desired to satisfy itself first as to whether the High Court was properly moved in granting extension of time which enabled the appellants filed this appeal. We had in mind that the enabling provision in such an application is S. 11 (1) of the Appellate Jurisdiction Act, Cap 141 (the AJA).

Mr. Nassoro Katuga assisted by Ms Esther Martin, learned Senior State Attorney and learned State Attorney respectively, appeared for the respondent told the Court that the High Court was not properly moved. The correct and appropriate provision which ought to have been cited is S. 11 (1) of the AJA. He went on to say, as the High Court was not properly moved, then its decision cannot stand. As such, in the absence of a notice of appeal, the appeal before us is incompetent. He prayed that the purported appeal be struck out.

The appellants at first opposed what had been said by Mr. Katuga. In particular they said they had filed Criminal Application No. 611 of 2018 under Rule 50 (1) of the Rules in this Court so as to amend their application for extension of time of notice of appeal which the High Court

had already granted. Surely, that move taken by the appellants is misconceived. This is because the powers to grant extension of time to file a notice of appeal out of time lies exclusively with the High Court in terms of S. 11 (1) of the AJA which reads:-

*S. 11 (1) Subject to subsection (2), **the High Court** or, where an 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.*

[Emphasis Ours].

At long last they prayed, after they understood the point of law raised, that they be released from prison as so far they had served a period of eight years in prison.

We wish to point out at the outset that the function of the Courts of law is to apply and interpret the laws of the country. The superior courts have the additional duty of ensuring proper application of the laws by the courts below (See **Marwa Mahende vs R.** [1998] TLR 249).

In this case, we expressed our concern as to whether the High Court was properly moved under Rule 47 of the Rules when it granted extension of time to file a notice of appeal out of time. The Republic, through Mr. Katuga, came out and told us that the High Court was not properly moved. The enabling provision is S. 11 (1) of the AJA reproduced supra. We entirely agree that the High Court was not properly moved when it entertained the application for extension of time which was taken out under Rule 47 of the Rules. Since, the High Court was not properly moved, the purported extension of time to lodge notice of appeal out of time has no leg to stand on as such this appeal is incompetent. Under the circumstances therefore we are entitled to intervene.

In the exercise of our revisional powers as provided under S. 4 (2) of the AJA, we quash the proceedings and ruling of the High Court. The appellants may start afresh to process their appeal by making an application in the High Court for extension of time to file notice of appeal out of time under S. 11 (1) of the AJA.

Order accordingly.

**DATED at DAR ES SALAAM** this 1<sup>st</sup> day of March, 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**