

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

**CRIMINAL APPLICATION NO. 1 "B" OF 2015**

**YUSUPH MBULULO .....APPLICANT**

**VERSUS**

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

**(Extension of time to file notice of Appeal from the decision of the High  
Court of Tanzania at Iringa)**

**(Mwipopo, J.)**

**dated the 28<sup>th</sup> day of January, 2000**

**in**

**Criminal Session case No. 9 of 1995**

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**RULING**

30<sup>th</sup> May, & 1<sup>st</sup> June, 2018

**LUANDA, J.A.:**

This is an application for extension of time to file a notice of appeal out of time from the decision of the High Court of Tanzania (Mwipopo, J.) sitting at Iringa so as to enable the applicant appeal in this Court. The application is taken under Rules 10 and 48 (1) of the Court of Appeal Rules, 2009 (the Rules). It is made by way of notice of motion supported

by the affidavits of the applicant and a prison officer going by name of Mr. Makoti Anthony Wabare.

What can be gleaned from the two affidavits in support of the application is that the applicant was charged in the High Court of Tanzania at Iringa with murder. He was convicted as charged and sentenced to death. The applicant is aggrieved by the finding of the High Court, he intends to appeal to this Court.

It is further deponed that the applicant lodged his notice of appeal and handed it to the Prison authority where the latter assured him that his notice of appeal will be dispatched to the Court. So he was home and dry, waiting to be supplied with the record of appeal.

The said record of appeal was not forthcoming. At long last, through correspondence, he was told that his case file is nowhere to be traced. As the applicant is eager to appeal and further as his case file could not be traced, he decided to start a fresh the appeal process, hence

this application. Whether or not the cause taken by the applicant is proper is not my concern at this moment.

Be that as it may, when the application came for hearing, the Court wished to satisfy itself first as to whether the Court was properly moved. I posed that question because in terms of S. 11 (1) of the Appellate Jurisdiction Act, Cap. 141 RE 2002(the AJA), the powers to entertain an application of this nature is exclusively vested in the High Court.

Ms. Kasana Maziku, learned State Attorney who represented the respondent supported the observation made by the Court that the power to entertain the application of this nature is vested in the High Court and not in this Court. She prayed the application be struck out.

On the other hand the applicant prayed the Court to entertain his application.

S. 11(1) of the AJA which is the enabling provision and not Rule 10 of the Rules, for an application for extension of time to file a notice of

appeal out of time from the decision of the High Court or subordinate court with extended powers so that to appeal in this Court rests squarely in the same High Court or the subordinate court with extended powers, as the case may be. It is the High Court or subordinate court with extended powers alone which have the mandate to entertain such an application. The section reads as follows:-

*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 Supplied]*


In this case, we have shown the matter originated from the High Court. It is crystal clear that in terms of S. 11 (1) of the AJA it is the very High Court which is clothed with powers to entertain an application of this nature and not this Court.

The application before me, therefore, is misconceived. The same is struck out. Order accordingly.

**DATED at IRINGA** this 31<sup>st</sup> day of May, 2018.

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

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

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