

IN THE COURT OF APPEAL OF TANZANIA

MWANZA

CRIMINAL APPLICATION NO. 39/08 OF 2022

KAYORA SENYANGEAPPLICANT

VERSUS

MAKACHA OGUTU1ST RESPONDENT

SABASABA OGUTU2ND RESPONDENT

(Application for an extension of time to file a notice of appeal against the decision of the High Court of Tanzania, at Mwanza)

(Rumanyika, J.)

Dated 15th day of September, 2021

In

Misc. Criminal Application No. 23 of 2021

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RULING

7th & 8th December, 2022

MAIGE J.A;

The applicant and the respondents herein started their litigation at the Primary Court of Nyakaliro way back in 2020 where the applicant instituted a criminal case against the respondents in relation an offence purportedly under section 89 (2) (a) of the Penal Code Cap. 16 R.E. 2019. The respondents were found innocent and thus acquitted. The situation remained the same despite the applicant's appeal to the District Court of Sengerema. Aggrieved and having delayed to pursue his intended action timely, the applicant applied to the High Court for an extension of time to

appeal thereto. The High Court (Rumanyika, J.) found that good cause for the delay has not been shown. He thus dismissed the application.

The applicant, it would appear, is aggrieved by the said decision. He could not however file the notice of appeal within time and henceforth this application which has been preferred under rules 10 and 45A (1) (b) of the Tanzania Court of Appeal Rules, 2009 (the Rules) among others. Rule 45 (1) (b) of the Rules allows a person who is aggrieved by a decision of the High Court refusing an extension of time to file a notice of appeal, to apply for the same afresh to the Court within 14 days of the refusal.

At the hearing, I asked the applicant, who appeared in person without representation if at all he had filed any application at the High Court for extension of time and denied and he said he did. He could however not show from the affidavit when, if any, such an application was filed and refused. He only showed the decision of the High Court refusing to extend time to appeal against the decision of the District Court, which is the subject of the intended appeal. Mr. Feran Kweka, learned advocate who appeared for the respondents informed the Court that he is not aware of any such application.

On my part, I have severally read the notice of motion and the affidavit in support thereof and satisfied myself that, the applicant has not,

before filing this application, attempted a first bite application to the High Court. As I understand the law, the jurisdiction of the Court to entertain an application for extension of time to apply for leave to appeal, certificate on points of law or notice of appeal, is conditional upon there being a decision of the High Court refusing to grant the same. This is what rule 45A (1) of the Rules entails.

As the instant application was not preceded by a first bite application to the High Court, it has obviously been preferred prematurely. On that account, therefore, I strike the application out. As the matter was raised by the Court on its own motion, I will not give an order as to costs.

Ordered accordingly.

DATED at **MWANZA** this 7th day of December, 2022.

I. J. MAIGE

JUSTICE OF APPEAL

The Ruling delivered this 08th day of December, 2022 in the absence of both parties, is hereby certified as a true copy of the original.


C. M. MAGESA

DEPUTY REGISTRAR
COURT OF APPEAL