

IN THE HIGH COURT OF TANZANIA
AT SUMBAWANGA

MISCELLANEOUS APPLICATION NO. 4 OF 2006
**(Original case No. 179/ 1998- Sumbawanga District
Magistrate)**

Adolf s/o Lyampinda.....Applicant
Versus
The Republic.....Respondent

Dated 23/8/2007
And
6/8/2007

RULING

A.A.NCHIMBI,J

In this application for leave to appeal out of time, the applicant is basically accusing the prison officers of not insisting him in his endeavor to pursue an appeal against the judgment of the trial court.

The appellant is attempting to appeal to this court after more than five years from the date of convicted on 10/2/1999 and sentenced to suffer thirty years in jail. He sought to move the court in this application sometime in may 2005.

As rightly submitted by Mr Mwangamila, learned State Attorney, who appeared for the respondent Republic no intention of appeal was ever filed and at any rate the applicant did not meet the requirements of Law under S. 361 (1) (a) and (b) and (2) of the Criminal Procedure Act Cap. 20. The applicant is blaming the prison officers for that and yet there is no evidence to that effect.

This court had granted him time to seek the assistance of the prison officers concerned in view of what he asserted to no avail at all.

On this background Mr Mwangamila cited the case of **Zebitis Kawuku vs A. Karim** (1938) E.A.C.A No. 35. He submitted on the basis of what obtained in this application, the applicant's main reason for delay is impliedly, ignorance of Law.

I am not quite convinced that the applicant was really ignorant of Law.

The record shows that upon being sentenced the trial court rightly explained to him of his right of appeal. Added, the severe sentence imposed by the trial court would have been sort of alarm to him to quickly consider about exercising his right of appeal. Furthermore, it is my conviction that had he expressed his desire to appeal to the prison officers in time, he would have been assisted as required. He did not do all this probably because he was satisfied with the judgment and sentence meted out. I am not convinced to think otherwise in the **granstances**. And above all ignorance of law is no defence in the eyes of law.

In view of the above, I am inclined to find that the intended appeal is merely an afterthought. I dismiss the application.

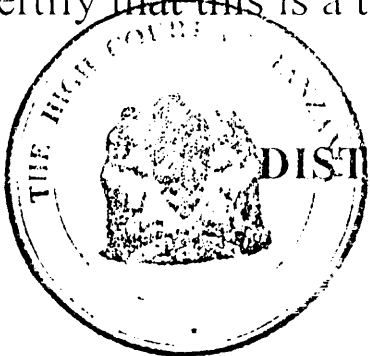
**A.A.NCHIMBI,
JUDGE
2/8/2007**

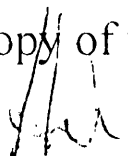
Dated 6/8/2007
Coram- A.A.Nchimbi,J
Applicant-present
For Respondent-Mr Mkizungo,SA
B/C- Salim

Court:
Ruling delivered in open court.

**A.A.NCHIMBI,
JUDGE
6/8/2007**

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




**DISTRICT REGISTRAR
8/11/2007**