

IN THE HIGH COURT OF TANZANIA

AT TABORA

APPELLATE JURISDICTION

(Tabora Registry)

(DC) CRIMINAL APPEAL NO. 27 of 2013

ORIGINAL CRIMINAL CASE NO. 153 OF 2011

ON THE DISTRICT COURT OF KIGOMA

AT KIGOMA

BEFORE: L.G. BUYAMBA Esq. RESIDENT MAGISTRATE

BUKURU S/O ELISHA & ANOTHERAPPLICANT
(Original Accused)

VERSUS

REPUBLICRESPONDENT
(Original Prosecutor)

REASON'S FOR AN ORDER

7th & 19th August, 2014

S.M.RUMANYIKA, J

Bukuru Elisha and Another (the Applicants), applied under section 361 (2) of the Criminal Procedure Act Cap. 20, for

enlargement of time to file notices of appeal against conviction and sentence meted out to them on 27/09/2011 by the District Court – Kigoma. Mr. Miraji Kajiru Learned State Attorney for the Respondents readily conceded to it. I granted the application and reserved reasons therefor. Here are the reasons.

The Applicants appear in person. Infact having adopted all the contents of affidavits of Bukuru Elisha also that of Uwezo Hamisi, and having the two matters (Nos 27 and 28 of 2013) consolidated and determined as one, the Applicant prisoners, submitted in a nutshell and logically, that their notices of appeals were presented for transmission well within the time. But for the Prison Officers' inaction. As said, the Respondents support the applications entirely. In that as long as the Prison officers in whose custody the Applicants were held never did the needful, the latter were therefore not to blame.

The issue here is whether the delay by Applicants was justified in law. The test is always of good and sufficient cause. Because if time for a subject to take necessary steps (lodgment of notice of appeal for that matter) was open ended, endless litigation would have been order of the day. Courts of law are declined to offer the leeway.

It is common knowledge that Prisoners cannot as a general rule, have an arm. Leave alone influence on any affairs in the external world. The moment one presents notice of appeal for transmission by Prison officers he is "home and dry". As such from there, the

order as hereby do, immediate release of the Applicant. Save for any other lawful retention (if any). As the Appellant has served reasonable and substantive part of the impugned sentence. Leave alone the fact that he was, by mid 2008 already behind the bars. In connection to this charges. Ordered accordingly.

R/A explained.

S.M.RUMANYIKA

JUDGE

26/08/2014

Delivered under my hand and seal of the court in chambers. This 28/08/2014. In the presence of M/s Elizabeth Mkumbe Learned State Attorney and the Applicant.

S.M.RUMANYIKA

JUDGE

28/08/2014