

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF KIGOMA

AT KIGOMA

APPELLATE JURISDICTION

MISC. CRIMINAL APPLICATION NO. 6 OF 2021

(Original from Criminal Case No. 123 of 2019 of Kigoma District Court Before E.B.
Mushi – RM)

DIRECTOR OF PUBLIC PROSECUTIONAPPLICANT

VERSUS

ZACHARIA S/O RICHARD.....RESPONDENT

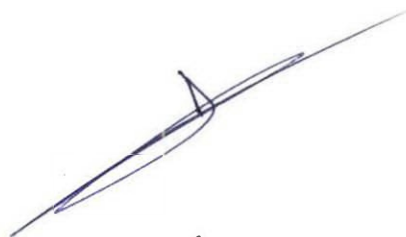
R U L I N G

09th & 09th July, 2021

A. MATUMA, J

The Applicant Director of Public Prosecutions prosecuted the Respondent Zacharia Richard in the District Court of Kigoma at Kigoma vide Criminal Case No. 123 of 2019 for Rape and Unnatural offence. The respondent was however acquitted on the 29/09/2020 in both counts.

The applicant was aggrieved of such acquittal but could not appeal within time hence this application for extension of time.



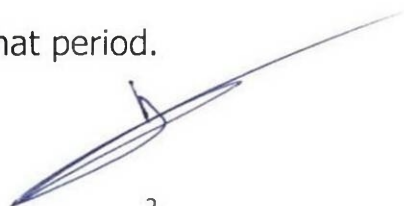
At the hearing of this application, Antia Julius learned State Attorney represented the applicant while Thomas Msasa learned advocate represented the respondent.

The learned State Attorney submitted that after the acquittal of the Respondent, the Applicant immediately lodged the notice of intention to appeal and started to make follow up in the District Court for the proceedings and Judgment in vain.

That after several follow ups and for some months, it transpired that the District Court had given the documents to the Applicant's Law Secretary since January, 2021 and the said Law Secretary had misplaced them while being unaware of the intended appeal. She thus prayed that the application be granted.

On his part Mr. Thomas Msasa learned Advocate opposed this application submitting that the applicant's affidavit in support of the application contain hearsays and that the affidavit of Frank Makaranga (Law Secretary) was not filed.

The learned advocate further argued that since the applicant admitted to have received the relevant documents on 20/01/2021, they ought to have lodged their appeal from that period.



Having heard the parties for and against this application, I find that the same is without any merit.

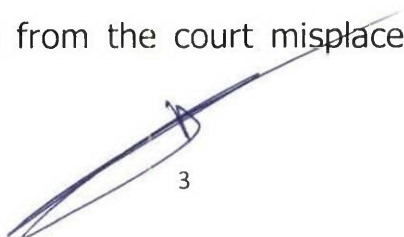
The impugned Judgment was delivered on 29/09/2020 according to the Applicant's own affidavit. They ought to have appealed in this court by October, 2020. They did not however do so allegedly that by that time they were not yet ready supplied with the relevant documents.

There is no any document to support the arguments of the learned State Attorney that indeed they made any follow up of the documents in time.

Even the alleged notice of intention to appeal has not been attached to the affidavit as alleged. I have not seen it.

But even if we take everything to be equal that indeed the notice was timely filed, and the judgment and proceedings were requested in time, there is undisputed fact that the Applicant received those documents on January, 2021 as per Court Dispatch. In that regard, this application ought to have been brought soon after the applicant had received the documents in January, 2021. Instead, this application was lodged in this court on 31/05/2021.

The reasons advanced is that, once the Law Secretary of the Applicant received the documents from the court misplaced them. There is no



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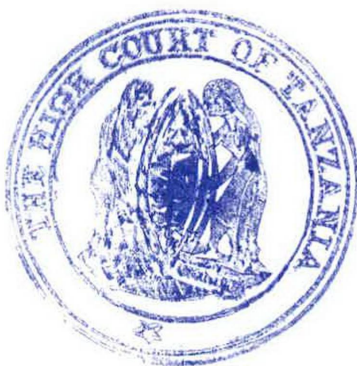
affidavit of the said law secretary one Frank Makaranga as rightly argued by Mr. Thomas Msasa learned advocate.

In the case of **John Chuwa versus Anthony Ciza** [1992] TLR 233, the Court of Appeal of Tanzania held that an affidavit of a person so material has to be filed.

In the instant application, there should have been an affidavit of the said Frank Makaranga (Law Secretary) to state when exactly he received the documents and how did he misplaced them. Even after the misplacement, what measures did he take to remedy the situation.

In the absence of such affidavit, the applicant's submission before me remains without any base for having been hearsays as rightly submitted by Mr. Thomas Msasa learned advocate.

I find that this application has been brought as an afterthought and it is accordingly dismissed. It is so ordered. Right of appeal is explained.




A. Matuma

Judge

08/07/2021

Court: Ruling delivered in this 09th day of July, 2021 in the presence of Benedict Kivuma learned State Attorney for the applicant and the Respondent in person. Right of Appeal is explained.

Sgd: A. Matuma

Judge

08/07/2021