

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(DAR ES SALAAM DISTRICT REGISTRY)

DAR ES SALAAM

MISCELLANEOUS CRIMINAL APPLICATION NO. 61 OF 2021

(Originating from Criminal Case No. 170 of 2010 Kisutu RMc)

JACKSON ZEBEDAYO @ WAMBURA APPLICANT

VERSUS

REPUBLIC RESPONDENT

RULING

Date of last Order: 04/08/2021

Date of Ruling: 18/08/2021

Itemba, J.

This ruling relates to an application lodged on 23rd of April 2021, by Jackson Zebedayo @ Wambura and Charles Wambura Itembe herein the 1st and 2nd applicants respectively.

The applicants are seeking for leave for an extension of time within which to file a notice of appeal to this Court against the decision of the Resident Magistrate Court of Dar es Salaam at Kisutu, in Criminal Case No. 170 of 2010.

In their affidavits, the applicants have stated that; they were charged with the offences of armed robbery contrary to section 287A, unnatural

offence contrary to section 154(1) (a) and gang rape contrary to section 131A (1) all of the Penal Code [Cap 16 RE 2002].

The first applicant was convicted of armed robbery and gang rape while the second applicant was convicted of armed robbery, unnatural offence and gang rape. Both were sentenced to 30 years imprisonment in respect of each count. The applicants appealed to this Court against both conviction and sentence through Criminal Appeal No. 150/2012 and their appeal was dismissed. The applicants tried their second bite by appealing before the Court of Appeal. At the Court of Appeal, it was revealed that the appellants were convicted of three offences but based on the notice of appeal filed before the High Court in Criminal Appeal No 150/2012, the applicants appealed against only one offence of armed robbery. It was ruled out that the High Court wrongly entertained grounds of appeal on offences which were not appealed against.

Consequently, the Court of Appeal under Section 4(2) of the Appellate Jurisdiction, Cap 141 RE 2002 nullified the proceedings and decision of the High Court. Under those circumstances and in efforts to pursue their appeal before the High Court, the applicants filed this application.

At the hearing of this application, the applicants appeared in person, unrepresented. The 1st applicant in supporting his affidavit and prayer for extension of time; he stated that he was convicted with two counts of rape and armed robbery and would like to appeal against both counts contrary to what was indicated in the previous Notice of appeal.

The second applicant stated that he was convicted of three offences of armed robbery, gang rape and unnatural offence. He prayed to file his notice of appeal out of time for the same reasons advanced by the first the applicant.

The respondent republic did not object to the application.

The issue is whether under these circumstances, this Court can issue leave for an extension of time for the applicants to file their notice of appeal.

As regards to time limitations in filing of appeals before the High Court, section 361 (1) of the Criminal Procedure Act [Cap 20 R.E 2019] herein the CPA, provides that;

361. -(1) "Subject to subsection (2), no appeal from any finding, sentence or order referred to in section 359 shall be entertained unless the appellant- (a) has given notice of his intention to appeal within ten days from the date of the finding, sentence or order...."

*(2) "The High Court may, **for good cause**, admit an appeal notwithstanding that the period of limitation prescribed in this section has elapsed. [Emphasis supplied.]"*

As a matter of principle, it is in the discretion of the court whether to grant or refuse an application for extension of time. That discretion however, should be exercised judicially. As indicated above, this Court is empowered to admit an appeal beyond the period of limitation prescribed under section 361(1)(a) of the CPA upon the appellant showing good cause. What amounts to good cause is dependent in various factors which may include "length of the delay involved; the reasons for the delay; the degree of prejudice, if any, that each party stands to suffer depending on how the Court exercises its discretion; the conduct of the parties; and the need to balance the interests of a party who has a decision in his or her favour against the interest of a party who has a constitutionally underpinned right of appeal". See **Jaliya Felix Rutaihwa v Kalokora Bwasha and Another**, Civil Application No. 392/01 of 2020.

As submitted by the applicants, it is factual that the notice of appeal filed by the applicant in Criminal Appeal no. 150/2012 had irregularities which led to the Court of Appeal to nullified the proceedings and decision of the High Court Proceedings and that the applicants still intend to appeal against three counts which they were convicted with. The said Court of Appeal decision was issued on 29th March 2021 and this application was filed on 23rd April 2021, which I find it to be within a reasonable time. I have also considered the fact that the application is not opposed by the respondent.

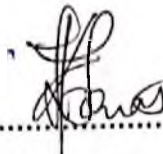
Thus said, I am fortified that the applicants have shown good cause for this Court to grant the application as prayed for in the Chamber summons. I therefore grant the application for leave for an extension of

time to file a notice of intention to appeal out of time in Criminal Case No 170/2010.

The applicants should lodge the requisite notice of appeal within thirty (30) days from the date of delivering this ruling.

It is so ordered.

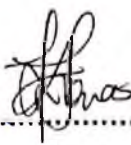



L. J. Itemba
JUDGE
18/08/2021

Ruling delivered at Dar es Salaam this 18th day of August, 2021 in the presence of the applicants in person, Ms. Jenifer Masue, Senior State Attorney for the Respondent and Ms. Masilamba Court Clerk.

Right of Appeal Explained.




L. J. Itemba
JUDGE
18/08/2021