

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(MOROGORO DISTRICT REGISTRY)**

AT MOROGORO

MISCELLANEOUS CRIMINAL APPLICATION NO. 07 OF 2022

**(Originating from Criminal Case No. 38 of 2018; in the District Court of
Kilombero, at Ifakara)**

ANDREA S/O SAMWELI @ MATONGO APPLICANT

VERSUS

THE REPUBLIC RESPONDENT

R U L I N G

22nd June, 2022

CHABA, J.

This is an application for leave to lodge a notice of intention to appeal and petition of appeal out of time vide Criminal Case No. 38 of 2018. The application has been preferred under section 361 (2) of the Criminal Procedure Act [CAP. 20 R.E. 2019] (the CPA). It is supported by an affidavit disposed by the Applicant himself.

Today on the 22nd day of June, 2022 the matter came up for hearing and all parties entered appearance. Whereas, the applicant appeared in person, unrepresented the Respondent Republic enjoyed the service of Ms. Theodora Mlelwa, learned State Attorney.

To kick the ball rolling, the applicant commenced to submit by stating that, *Mhe. Jaji nimetuma maombi ya kuandika rufaa nje ya muda kutokana na sababu ambazo ziko kwenye kiapo changu (Affidavit). Naomba pia kiapo changu kiwe sehemu ya mwenendo wa shauri hili.*

7
.
=

On her part, the learned State Attorney submitted that the appellant's affidavit shows that sometimes in the year 2021 he filed an appeal before this court where it was registered as Criminal Appeal No. 18 of 2020, High Court of Tanzania, Dar Es Salaam Registry and later the case file was assigned to Hon. C. Kisongo, PRM with Ext. Jurisdiction. In the course of trial, Hon. C. Kisongo, PRM with Ext. Jurisdiction noted that the notice of appeal was improper before the court and proceeded to dismiss it.

The learned State Attorney went on to state that, as a matter of procedure, the applicant was supposed to seek for an extension of time to refile his Notice of his intention to appeal taking into account that the same, usually initiates the institution of an appeal. Ms. Mlelwa underlined that she was surprised to see that the applicant lodged another application before this court and his application was granted by Hon. Rwizile, J., vide Misc. Criminal Application No. 72 of 2021. She emphasized that these two documents bring uncertainties whether the applicant complied with the order given by the Hon. Kisongo, PRM with Ext. Jurisdiction or not.

She highlighted that, due to insufficient of information, she prayed this application be dismissed.

In brief rejoinder, the applicant had nothing useful to add other than requesting the court to this effect; *Mhe. Jaji, naiomba Mahakama izingatie nyaraka zangu na iweze kuniangalia na kunitengulia adhabu ya miaka thelathini (30) na kuniachilia huru.*

Having considered the rival arguments from both parties, I think in my view that, the burning issue is whether or not this application has merit.

According to the Chamber Summons made under section 361 (2) of the CPA (supra), the applicant is requesting this court to grant him with

the leave to lodge a Notice of his Intention to Appeal and Petition of Appeal out of time so that he can appeal against the impugned decision of the District Court of Kilombero, at Ifakara in Criminal Case No. 38 of 2018. The applicant further prays for any other order(s) this Honourable Court may deem fit and equitable to grant.

Looking at the affidavit sworn by the applicant and other court records, when the applicant was convicted and sentenced by the trial court to serve thirty (30) years imprisonment on 25/04/2019, he was unhappy and therefore preferred an appeal before this court by filing Notice of his intention to Appeal on 30/04/2019. Subsequently, he requested to be supplied with the certified copies of the trial court proceedings and judgement. Afterwards, he managed to file his appeal where it was registered and marked Criminal Appeal No. 18 of 2020.

His appeal was heard by Hon. Kisongo, PRM with Ext. Jurisdiction, but during hearing of the appeal, the court noticed that the Notice of Intention to Appeal was defective for being wrongly titled. It reads: **"IN THE DISTRICT COURT OF KILOMBERO, AT IFAKARA"** instead of **"IN THE HIGH COURT OF (T), AT DAR ES SALAAM."** He went on submitting that, as his Appeal was struck out for being incompetent, he then preferred this application.

Having gone through the applicant's affidavit, I have the following observations:

One; as the applicant's appeal was noticed to be incompetent on the ground that the Notice of intention to Appeal which is a mandatory document to initiate any criminal appeal was defective, then the applicant was duty bound to amend the same and refile before the same court or the court having competent jurisdiction to try the matter. That is to say, the

court vested with the powers under the umbrella of Extended Jurisdiction was a proper court to lodge his application. Failure of which this application holds no water.

Secondly, it is unknown how the applicant's application, i.e., Misc. Criminal Application No. 72 of 2021 – High Court of Tanzania, Dar Es salaam registry reached into the hands of my brother Hon. Rwizile, J. My brother Rwizile, J., however, had an opportunity to hear the matter and upon heard the application, he gave the following order:

“Since the application is not contested, it is granted. The applicant is given forty (40) days from today (on 11/06/2021) to file the necessary pleadings”.

Although the applicant was given 40 days to file the necessary documents, but for reasons better known by him, did not exercise his rights within the prescribed period of time. Indeed, there is no sufficient explanations why he failed to exercise his legal right within time. In other words, his own efforts ended in vain. In my settled view, the applicant was supposed to refile his notice of intention to appeal and petition of appeal soon when his application was dismissed by Hon. C. Kisongo, PRM with Ext. Jurisdiction. And if at all, the case file was re-assigned before my brother Hon. Rwizile, J, then the applicant and his documentary evidence would have supported and demonstrated to that effect. In the alternative, the Respondent / Republic also had this liability to assist the court to arrive to a fair and just decision. Unfortunately, the Respondent Republic had no any clues concerning the applicant's move in a bid to seek court's permission to lodge his notice of intention to appeal and petition of appeal, respectively. In my opinion, the Republic was in a better position to know the applicant's effort to achieve his goal and I am sure that would have

assisted this court to know exactly how the case file moved from Hon. C. Kisongo, PRM with Ext. Jurisdiction to the High Court of Tanzania (Hon. Rwizile, J.).

In my considered opinion, apart from the Applicant himself and the Respondent Republic, the only persons who are in a better position to understand all what transpired from the date the matter was assigned to Hon. Kisongo, PRM with Ext. Jurisdiction and then shifted to my brother Hon. Rwizile, J., are the Prisons Authority and the Honourable Deputy Registrars of the High Court of (T), Dar Es Salaam Registry.

In the upshot, this application is non-meritorious and it is hereby dismissed accordingly. The applicant is advised to consult the two authorities for him to get his breakthrough. **It is so ordered.**

DATED at MOROGORO this 22nd day of June, 2022.



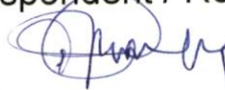
M. J. Chaba

Judge

22/06/2022

Court:

Ruling delivered at my Hand and Seal of the Court in Chamber's this 22nd day of June, 2022 in the presence of the Applicant who appeared in person, unrepresented and Ms. Theodora Mlelwa, learned State Attorney who entered appearance for Respondent / Republic.



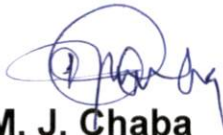
M. J. Chaba

Judge

22/06/2022

Right of appeal fully explained.




M. J. Chaba
Judge
22/06/2022