

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

MISC. CRIMINAL APPLICATION No. 79 OF 2021

(C/F Misc Application No. 11/2020 Originating from Cr .Case No.712 of 2009 in the District Court of Arusha at Arusha)

PETER JOSEPH CHACHA.....APPLICANT

VERSUS

DPP.....1ST RESPONDENT

EDWARD KALANGA.....2ND RESPONDENT

RULING

Date of last order: 4-4-2022

Date of Ruling 2-5-2022

B.K.PHILLIP, J

The Applicant herein lodged this application under the provisions of section 359(2) and 361(2) of the Criminal Procedure Act, [Cap 20 R.E 2019], praying for the following orders;

- i. That, this Honourable Court be pleased to issue and grant, and order for extension of time to file an appeal.*
- ii. Any other relief the Court may deem fit to grant.*

A brief background of this matter is as follows; In year 2020, the applicant herein filed an application at the Resident Magistrates' Court of Arusha at Arusha, praying for restoration of his motor vehicle, Mitsubishi Pajero with chassis no. V234006734, CC 3000, black in colour, turbo, which was seized by the police, Misc Criminal Application No 11 of 2020. In that application the applicant's major argument was that in Criminal Case No.712/2009 the Court ordered his motor vehicle aforesaid to be handed over back to him. On 30th November 2020 the aforesaid Misc Criminal Application No. 11 of 2020 was determined and the Court ordered among other things that the aforesaid said motor vehicle should be restored to the applicant as ordered by the Court in Criminal Case No. 712 of 2009. The Applicant did not file any appeal against that decision. However, as days went on, he decided to appeal against that decision, but the time for filing the appeal had already lapsed. Hence, he filed this application seeking for extension of time to lodge his appeal in this Court.

At this juncture I think it is worth pointing out that the 2nd respondent did not file any counter affidavit, despite being accorded time to do so. Thus, this matter proceeded ex-parte against the 2nd respondent. I ordered this application to be disposed of by way of written submission. The applicant was unrepresented. He appeared in person whereas the learned State Attorney, Lilian Kowero appeared for the 1st respondent. Both, the applicant and the learned State Attorney filed their submissions as ordered by this Court.

Citing the provisions of section 361(2) of the Criminal Procedure Act, ("CPA"), the Applicant implored this Court to grant him the orders

sought in this application. He submitted that in Criminal Case No.712/2009, the Court ordered that he should be given back his motor vehicle and no appeal was lodged to challenge that order. Thus, the same is still valid up to date. Moreover, he contended that the actual value of the motor vehicle is Tshs 30,000,000/= but it was sold at lower price of Tshs 3,500,000/=.

In rebuttal, Ms. Kowero submitted as follows; That the Applicant has not shown any good cause in support of his application. The applicant's submission is full of arguments challenging the decision of the lower Court instead of showing the reasons for delay in filing his appeal. The applicant did not file his notice of intention to appeal against the Court order, the subject of this application timely. The same was filed nine (9) months from the date of ruling in contravention of the provisions of section 361(1)(a) of the CPA which provides that notice of intention to appeal has to be filed within ten days (10) from the date of the Ruling / Order intended to be appealed against. Expounding on this point Ms. Kowero submitted that the Ruling, the subject of this application was delivered on 30th November 2020, whereas the notice of intention to appeal was filed on 2nd August 2021. She urged this Court to dismiss this application for lack of merit.

In rejoinder, the Applicant submitted that he filed the notice of intention to appeal on the 2nd August 2021 after realizing that the 1st respondent is not willing give him his motor vehicle as ordered by the Court. He reiterated his submission in chief and insisted that the seizure of his motor vehicle was illegal. His properties including the motor vehicle at issue were

seized without following the acceptable legal procedures and were tendered in Court as exhibits without a certificate of seizure. What he is doing now is an attempt to rescue his properties which were seized illegally.

The task of this Court is to determine on whether the Applicant has adduced good grounds for this Court to grant him extension of time for filing his appeal.

Let me start by pointing out that as correctly submitted by Ms Kowero, in criminal cases, an appeal against any Ruling /Court Order which is not for a corporal punishment is preceded by an notice of intention to appeal which has to be filed within ten (10) days from the date of the Order / Ruling. In case of a sentence for corporal punishment only then , the notice of intention to appeal has to be filed within three days from the date of the sentence. This is in accordance with the provisions of section 361(1) (a) of the CPA. For ease of reference let me reproduce the same hereunder.

Section 361(1) (a) of the CPA;

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 or, in the case of a sentence of corporal punishment only, within three days of the date of such sentence.

In the instant matter , it is not in dispute that the ruling, the subject of this application was delivered on 30th November 2020 and the applicant

filed his notice of intention to appeal on 2nd August 2021, which is beyond the days prescribed in the above quoted provision of the law. Therefore it is crystal clear that the notice of intention to appeal was filed out of time. The legal consequence is that this Court has no powers to entertain any appeal in respect of the ruling or Court order in question. Similarly in the absence of a valid notice of intention to appeal filed pursuant the provisions of section 361 (1) (a) of the CPA an application for extension of time to lodge an appeal cannot be entertained too.

The explanations given by the applicant that he decided to lodge the notice of appeal in August 2021 after realizing that the 1st respondent was not willing to give him his motor vehicle are helpless and proves that the applicant's decision to start processing this appeal is a pure afterthought since at the beginning he was satisfied with the Court's ruling. And it contradicts the assertions he made in his affidavit in support of this application that he was supplied with the ruling and the Court order belatedly. In addition, it has to be noted that notice of intention to appeal is not required to be accompanied with the Court Order/ Ruling intended to be appealed against.

In the upshot, it is the finding of this Court that this application is incompetent for lack of notice of intention to appeal.

By way of passing and without prejudice to my findings herein above, I wish to point out that looking at the applicant's submission, it appears that the applicant's concern is that the 1st respondent is not willing to comply with the Court order, the subject of this application, that is why he has

decided to embark on the process of filing an appeal against the same. In my considered view since the Court order, the subject of this application is in favour of the applicant, an appeal is not a proper remedy to him as there is no need to appeal against an order which is in his favour. The issue that has to be dealt with is the execution of the Court order in question.

In the upshot, this application is struck out for being incompetent.

Dated this 2nd day of May 2022



A handwritten signature in blue ink, appearing to read "B.K. PHILLIP", is written over a horizontal line.

B.K.PHILLIP

JUDGE