

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

MISC. CRIMINAL APPLICATION NO.97 OF 2021

(Originating from Arusha Resident Magistrate's court at Arusha in Criminal Case No. 306 of 2019)

ARON CLEMENT NDOIVO @ BARIKI CLEMENT.....1ST APPLICANT

PETER NDOIVO.....2ND APPLICANT

VERSUS

THE REPUBLIC RESPONDENT

RULING

02/03/2022 & 02/03/2022

KAMUZORA, J:

The applicants preferred this application for extension of time to file an appeal to this court out of time against the judgment of the Resident Magistrate Court of Arusha delivered on 22/07/2021. The application was brought by way of chamber summons under section 361(2) of the Criminal Procedure Act Cap 20 R. E 2019 and was supported by the affidavit deposed by Mr. John Nicholus Mseu, counsel for the applicants.

Briefly, the applicants were charged in Criminal Case No. 306 of 2019 for the offence of armed robbery contrary to section 278A of the

Penal Code Cap 16 RE 2002 as amended by section 10A of the Written Laws (Miscellaneous Amendment) Act No. 3 of 2011. The facts reveal that, on 29th Day of June 2018, at Sorenyi Baraa area within the city, district and Region of Arusha the applicants jointly and together did steal cash money Tshs.13,000,000/= and different properties with total value of Tshs. 1,260,000/= and immediately before, during and after such stealing did use machete, club and hummer to threaten one Regina Kone Mollel in order to obtain and retain the said properties.

The trial court convicted the applicants for the offence charged and sentenced them to thirty years imprisonment and an order for compensation was issued. The applicant then brought the present application praying for an order of extension of time to appeal against the decision of the Resident Magistrate court in Criminal Case No. 306 of 2019.

In the affidavit in support of the application it was deponed that, after they were sentenced to prison, the applicants instructed counsel John Nicholas Mseu. That, the applicants' counsel wrote a letter requesting to be supplied with copies of proceedings and judgment for appeal purposes as per annexure ND-1 but the same were not supplied. That, he wrote a reminder letter on 2nd September 2021 (annexure ND-

2) but he was not supplied with any copy until to date. The delay in supplying copies of proceedings and judgment is the reason for delay in filing appeal to this court. The applicants' counsel believe that the applicant have chances to success thus pray for extension of time to file an appeal to this court.

On the date scheduled for hearing, the applicants were present together with their counsel Mr. John Nicholas Mseu and Ms. Amina Kiango, State Attorney appeared for the Respondent Republic.

When parties were called upon to address the court on the application, Ms. Amina Kiango, State Attorney informed this court that, the Republic did intend not to contest the application. She however addressed the court on the defects of the intended appeal which are; lack of signature of the appellant and lack of court seal and the fact that the notice of intention to appeal was not attached. She insisted on the need for the applicant to comply to the provision of section 361 (1)(a) of the Criminal Procedure Act which impose the requirement to lodge notice of intention to appeal.

In response to that, the counsel for the applicant informed the court that, the intended petition of appeal is yet to be filed that is why it was not signed or endorsed with the court seal as it is waiting for an order for

extension of time. He also informed this court that the applicants have already filed a notice of intention to appeal.

I have considered the chamber application, the affidavit in support of the application and the fact that the State Attorney acting for the interest of the Republic did not contest the application. On the issue of notice to appeal and the competence of the intended appeal, it is upon the applicants to ensure that they file proper documents before the court thus, the same cannot be discussed in this application. As the application is not contested, this court do hereby grant the application for extension of time for the applicants to appeal out of time. The applicants shall file the appeal to this court within thirty days (30) from today.

Application allowed.

DATED at **ARUSHA** this 02nd Day of March 2022.




D. C. KAMUZORA

JUDGE