

**IN THE COURT OF APPEAL OF TANZANIA
AT BUKOBA**

(CORAM: RUTAKANGWA, J.A., KAIJAGE, J.A., And MUSSA, J.A.)

CRIMINAL APPLICATION NO. 4 OF 2012

ELIA NIJEBERIKO APPLICANT

VERSUS

THE REPUBLIC RESPONDENT

(Application for Extension of time to Lodge a Notice Appeal from the conviction of the of District Court of Ngara District at Ngara, denied by the High Court of Tanzania at Bukoba)

(Luanda, J.)

dated the 20th day of June, 2004

in

Misc. Criminal Application No. 18 of 2004

RULING OF THE COURT

6th & 11th Dec. 2013

RUTAKANGWA, J.A.:

As far as we are concerned in this application, we can fairly and without prejudice, say that the applicant was on his own plea of guilty, convicted of armed robbery by the trial District Court of Ngara District. He was given the statutory minimum sentence of thirty years imprisonment. Apparently, he was aggrieved by the conviction and sentence, and wanted to appeal to the High Court.

The appellant was late in preferring his intended appeal. He accordingly filed Misc. Criminal Application No. 18 of 2004 (the application) in the High Court at Bukoba, seeking extension of time to appeal out of time. The application was dismissed by Luanda, J. (as he

then was) as the appellant had pleaded guilty and the sentence imposed was the minimum under the law. Aggrieved by Luanda, J.'s order, the applicant has now accessed this Court seeking the same relief as in the High Court. The application is brought under Rule 10 of the Tanzania Court of Appeal Rules, 2009 (the Rules). It is pertinently pointed out in the notice of motion that the Court is being moved to:

"grant the applicant leave to file the Notice and petition of Appeal in the High Court of Tanzania at Bukoba out of time."

The respondent Republic did not challenge the competence of the application nor file any affidavit in reply. It, therefore, came as no surprise to us, when Mr. Paul Kadushi, learned State Attorney, on the day of hearing rose and boldly informed us that the respondent was not opposed to the application. He urged us to grant it as it had merit. When asked by the Court on whether the Court had the jurisdiction to grant the relief sought in the application, he confidently replied in the affirmative. Because of this affirmative answer we had to reserve our considered ruling on the matter, which we are set to give.

As already alluded to above, the application is premised on Rule 10 of the Rules. The said Rule 10 provides as follows:-

"The Court may, upon good cause shown, extend the time limited by these Rules or by any decision of the High Court or tribunal, for the doing of any act authorized or required by these Rules, whether before or after the expiration of

that time and whether before or after doing of the act; and any reference in these Rules to any such time shall be construed as a reference to that time as so extended."

It is clear from the plain language of Rule 10 that this Court has jurisdiction to **extend the time limited by the Rules** "for the doing of any act authorized or required" by the Rules. Our objective reading of the Rules led us to no single provision in the Rules empowering this Court to extend the time for lodging a notice and petition of appeal in the High Court against the decision of the trial District Court. This is all because, as a single judge of the Court rightly said in **Marwa Maseke v R**; Criminal Application No. 96 of 2002 (unreported), the Rules govern appeals to this Court only. What we are sure of and we can confidently assert without any risk of being contradicted is that such powers are vested in the High Court on application under section 361 (2) of the Criminal Procedure Act, Cap 20 R.E. 2002.

Fortunately, we are not sailing in uncharted waters. We have had similar applications before: see, for instance, **Dickson s/o Mhagacha v R**, MZA Criminal Application No. 1 of 2004 (unreported) and **Marwa Maseke** (*supra*). We cannot do better than repeat what the Court said in **Marwa Maseke**. It said:-

*"As this Court observed in **Dickson s/o Mhagacha v. R....**, the position obtaining now is that in such a situation the remedy is for such a person to either appeal to this Court or apply for revision by this Court, against the order refusing to enlarge time for appealing to the High Court ."*

That has been the clear stance of the law to date.

In the light of the above discussion, we hold without any demur that this Court has no jurisdiction to grant the relief sought in the application, which we find to be totally misconceived and therefore incompetent. Apart from advising the hapless applicant to try his luck through either the appellate or revisional processes, we have no option but to strike out this incompetent application.

We so order.

DATED at MWANZA this 10th day of December, 2013.

E.M.K. RUTAKANGWA
JUSTICE OF APPEAL

S.S. KAIJAGE
JUSTICE OF APPEAL

K.M. MUSSA
JUSTICE OF APPEAL

I certify that this is a true copy of the original.

