

TANZANIA / JUDGMENT

20090316 TZHC Dodoma

COURT
TZHCDECIDED
16 March 2009

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4 IN THE HIGH COURT OF TANZANIA AT DODOMA MISC. CRIMINAL APPLICATION NO. 51 OF 2008 (ORIGINAL CRIMINAL CASE NO. 29 OF 2006 OF MPWAPWA DISTRICT COURT AT MPWAPWA) MENGI CHIMAI (S) MALOGO DAUD) APPELLANT JOBU CHARLES)
Versus THE REPUBLIC RESPONDENT 16/03/2009 & 16/03/2009

RULING

The applicants MENGI CHIMAI (S), MALOGO DAUDI and JOBU CHARLES are seeking for grant of extension of time for filing the Notice of Intention, to appeal and subsequently filing of the petition of appeal out of time in terms of the provision of section 361

- (1) and (2) of the Criminal Procedure Act, Cap. 29 R.E. 2002. The applicants were convicted on 17/02/2006 and sentenced to 30 years imprisonment plus 8 strokes of the cane. Section 361 (1) 4 2 2
- (a) of the Criminal Procedure Act provide that where a convict is not satisfied with the decisions of the court, he may lodge an appeal within 10 days, from the date of the decision but in the case of a sentence of corporal punishment he may lodge appeal within three days of the date of such sentence. The appellants filed their appeal on 24/02/2006 which was within a period of only seven days. In my candid view the applicants appeal was filed on time. During the hearing of this application they argued that even if they were out of time, they should not be blamed because the trial magistrate failed to comply with Section 359 of the Criminal Procedure Act. What they tried to argue is that, compliance with section 361 (1) (a) of the Criminal Procedure Act is subject to the compliance with the requirement of section 359, Criminal Procedure Act. That is to say, immediately after announcing the sentence or order, the trial Magistrate is required to inform the person involved or the convict who wishes to appeal against that decision the period of time he is required to give notice of his intention to appeal and to lodge his petition of appeal. The applicants were not addressed by the trial magistrate to that effect. Therefore, where the subordinate court or trial Magistrate fails to comply with the mandatory requirement of section 359 of Criminal procedure Act and consequently the person involved or the convict fails to comply with requirements of section 361 (1) (a) of Criminal Procedure Act, such failure or delay to file the notice of appeal on time was technically caused by the subordinate court or 3 trial magistrate for his failure too comply with the law, hence a sufficient reason for delay on the part of the convict. Initially,

Mr. Nchimbi, learned State Attorney who appeared for the Respondent/Republic attempted to defend the trial Magistrate that he complied with Section 359 Criminal procedure Act when he remarked at the end of his judgment that "Riiht of Appeal Explained." However, at the end, the Learned State Attorney conceded that in the circumstances of the case it is difficulty to say conclusively that section 359, Criminal Procedure Act was complied with. The Learned State Attorney concluded that, in the interest of justice the applicants should be given a chance to pursue their appeal. That is correct position and more so because the respondent never filed a counter affidavit to challenge the applicants assertion. Finally and for the above reasons this application is granted. The applicants are given 10 days from today to file their notice of appeal and petition of appeal. M.S. SjfALI H JUDG 16103/2009 - I = -. ... I I '

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