

TANZANIA / JUDGMENT

20100218 TZCA Arusha 2

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IN THE COURT OF APPEAL OF TANZANIA AT ARUSHA CRIMINAL APPLICATION NO. 2 OF 2008
AMIRI ATHUMANI.~..... APPELLANT VERSUS ' THE
DPP RESPONDENT (Application for Leave to File
Review out of time from the Decision of the Court of Appeal of Tanzania at Arusha} (Kaji, JA,
Kileo JA, and Kimaro JA.) dated the 21st day of April, 2008 in Criminal Appeal No. 209 of 2006

RULING

11th & 18th February, 2010 NSEKELA, J.A. On the 30.9.2008 the applicant Amiri Athuman, filed a chamber summons under section 361 of the Criminal Procedure Act Cap. 20 RE 2002 apparently seeking an order to file a notice of appeal out of time. On the 9.2.2010 the respondent Republic filed a Notice of ... _ . !?::;, : ~f~--- . ~ ,.. ~. 1 ~ .. \ Preliminary Objection challenging the validity of the chamber of • summons before this Court. On the 10.2.2010, Mrs. Neema Ringo, learned Senior State Attorney, elaborated on the ground advanced. She submitted that the application had been made under Section 361 of the Criminal Procedure Act which was inapplicable in applications before the Court. She added that applications to the Court are preferred under . Rule 45 of the then Court of Appeal Rules . by Notice of Motion. Section 361 of the Criminal Procedure Act dealt with appeals to the High Court and not to this Court. The applicant, who appeared in person, unrepresented, submitted that the Court should allow him to proceed as provided for in Article 107 A (2)(e) of the Constitution of the United Republic. Needless to say, section 361 of the Criminal Procedure Act applies to appeals to the High Court and not to this Court. Rule 45(1) of the then Court of Appeal rules was in the following terms:- 2 " Subject to the provisions of sub-rule(3) and to any other rule allowing informal application all applications to the Court shall be by motion, which shall state the grounds of the application" Sor the first error of the applicant was to make an application by chamber summons. A more serious error however was for the applicant to move the Court under section 361 of the Criminal Procedure Act. This was wrong. That provision has nothing to do with applications to this Court. The applicant sought to answer by requesting the court to invoke Article 107 A(2)(e) of the Constitution which provides as follows. 107 A(2)(e): Katika kutoa uamuzi wa mashauri ya madai na jinai kwa kuzingatia sheria, mahakama zifuatale kanuni zifuatazo, yaani: 3

- (e) Kutenda haki bila ya kufungwa kupita kiasi na masharti ya kiufundi yanayoweza kukwamisha haki kutendeka. The essence of this is that in dealing with Civil or Criminal cases the Court shall have regard to the need to achieve substantive justice without undue regard to technicalities. Article 107A(2)(e) above does not do away with rules of procedure in the administration of justice in the country. Not every procedural rule is outlawed by the said Article. In *China Henan International Cooperation Group v Salvand K.A. Rwegasira*, Civil Reference No. 22 of 2005 unreported the court held that - " It is now settled that wrong citation of a provision of the law or rule under which the application is made renders the application incompetent." Regarding article 107A(2)(e), the court went on to say:- 4 - ' I ' " In this case, as already indicated, the circumstances are such that we can hardly glean any element of technicalities involved. The role of rules of procedure in the administration of justice is fundamental. As stated by Collins, M.R. in *Re Coles and Ravenshear* [1907] IKBI, rules of procedure are intended to be that of handmaids rather than mistresses. That is their function is to facilitate the administration of justice. Here the omission in citing the proper provision of the rule relating to a reference and worse still the error in citing a wrong and inapplicable rule in support of the application is not in our view, a technicality falling within the scope and purview of Article 107A (2)(e) of the Constitution. It is a matter which goes to the very of the matter " 5 I am firmly of the settled view that section 361 of the Criminal Procedure Act is inapplicable to this application. I accordingly uphold the preliminary objection and strike out the application. It is so ordered. I .,make no order as to costs. DATED at ARUSHA this 16th day of February, 2010. H. R. NSEKELA JUSTICE OF APPEAL I certify that this is a true copy of the original \ . M.. DEPUTY R GIST COURT OF APPEAL 6

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