

TANZANIA / JUDGMENT

20091016 TZCA Dodoma 1

COURT
TZCADECIDED
16 October 2009

Source: media.tanzlii.org · Research copy typeset by Esheria. Not court-issued or certified.

IN THE COURT OF APPEAL OF TANZANIA AT DODOMA DOM CRIMINAL APPLICATION NO. 1 OF 2007 HARUNI PIASON L IBRAHIM MTANI J. VERSUS APPLICANTS DORINA LIDALIJE RESPONDENT (Application for Leave to Appeal to the Court of Appeal against the decision of the High Court of Tanzania at Dodoma) (Masanche, J.) dated the gth day of May, 2007 in Criminal Application No. 16 of 2005

RULING

16 October, 2009 MSOFFE, J.A. In my initial reading of the notice of motion and the accompanying affidavit it was not quite clear to me as to what exactly the applicants want in this application. Perhaps, this is not surprising because, being laymen, the applicants did not know how best to achieve their desired objective. Apparently the applicants were convicted of armed robbery contrary to sections 285 and 286 of the Penal Code by the Primary Court at Mpwapwa. They were then sentenced to terms of imprisonment for five years each purportedly under the provisions of the Minimum Sentences Act No. 1 of 1972 as amended by Act No. 10 of 1989. On appeal to the District Court at Mpwapwa the convictions were upheld. The sentences of five years imprisonment were substituted to fifteen years imprisonment because the said court opined that the offence was one of simple robbery; and that the Primary Court misconstrued the relevant provisions of Act No. 10 of 1989. Aggrieved, they sought to appeal to the High Court at Dodoma but realized that they were late in doing so. Henceforth, they filed an application in the High Court at Dodoma seeking enlargement of time to appeal. On 9/5/2007 the High Court (Masanche, J.) dismissed it. On 11/5/2007 they lodged this application seeking the following orders:- "(9 The applicants be granted a leave to appeal to the Hi'h Court of Tanzania Dodoma against the struck out of the appilcation (conviction, sentenced, order). 2 A certificate of the court that there is a point of law in this appilcation the fallure/delayment to lodge the struck out fo the appeal was out of our capacity as per section 636 of CPA cap. 20 (R.E. 2002). Any other that appeal 1st and acquitable in this matter on the grounds that failure/delayment to accumply the section 363 (a) and (b) of CPA cap 20 (RE -

2002) was out of our capacity possible, while the notice of intention to appeal was lodge before 10 days from the date fo conviction U/S. 361 (a) of CPA cap 20 (RE - 2002) and for an order that the costs fo an incidental to this appilcation abide the result of the shid appeal. The appilcation will be supported by the Affidavit of HARUNI PIA SON AND IBRA HIM MTANI/'

At the hearing of this application I took quite some time trying to decipher from the applicants as to what they want exactly. In the process, I understood them to be saying that they want to appeal against the decision of Masanche, 3. If so, the legal position will, in my view, be as I shall attempt to demonstrate hereunder. Apparently on 15/5/2007 the applicants lodged a notice of appeal against the decision of Masanche, J. Much is contained in the notice but it is clear from the material aspect of it that it is against the decision of Masanche, J. given on 9/5/2007. I may point out here that the notice was given within the period of fourteen days prescribed under Rule 61 (1) of the Tanzania Court of Appeal Rules, 1979, hereinafter the Rules. Under the provisions of the sub-rule, the notice instituted the appeal. That being the position, it was, and indeed still is, open to the applicants to pursue their appeal. Since this is a criminal matter, after the notice of appeal had been lodged, the Registrar of the High Court was duty bound to prepare a record of appeal in terms of Rule 64 (1) of the Rules. Going by the record before me, a record of appeal is yet to be prepared. The Registrar is hereby directed to prepare the record as soon as possible so that the appeal process may take its normal course. El Perhaps, I should mention here in passing that in terms of section 6 (7) (b) of the Appellate Jurisdiction Act No. 15 of 1979 an appeal lies to this Court only if the High Court certifies that a point of law is involved. In this case, as already stated, this matter has its origin in the Primary Court. However, the provisions of paragraph (b) above would not apply because the High Court is yet to determine the appeal intended to be lodged against the decision of Mpwapwa District Court. I am aware that Part IV of the Rules, specifically as provided for under Rule 60 (1) thereof, applies "only to appeals from the Hi'h Court acting in origina/ and appellate jurisdiction in criminal cases and to matters related to them " (Emphasis supplied.) In this case, the matter before Masanche, J. was not in exercise of the original jurisdiction of the High Court. Strictly speaking, it was also not in exercise of its appellate jurisdiction because no appeal had been filed and determined by the High Court. So, for purposes of sub-rule (1) above, it was a matter "related" to the appellate jurisdiction of the High Court thereby falling under the provisions of Part IV of the Rules. As it is therefore, in the light of the foregoing, it is open, and quite in order for that matter, to the applicants to pursue the appeal which they have already instituted by virtue of the aforesaid notice of J!i!il For the foregoing reasons, this application was uncalled for because it has no basis in law. It is accordingly struck out. DATED at DODOMA this 16th day of October, 2009. OP

3. H. MSOFFE JUSTICE OF APPEAL

, fy that this is a true copy of the original. 3 (Z. A. AMA) DEPUTY REGISTRAR rel

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE	https://media.tanzlii.org/media/judgment/333079/ source_file/3518828966610645/20091016_TZCA_Dodoma_1.pdf
CASE PAGE	https://chat.esheria.ai/case-law/tanzania/haruni-piason-v-dorina-lidaliye-leavetoappeal- tzca-2009

Prepared on 14 October 2026 · Esheria