

IN THE HIGH COURT OF TANZANIA  
IN THE DISTRICT REGISTRY AT TÁBORÁ  
MISC. CRIMINAL APPLICATION NO. 2 OF 2005

(In the matter of an application for extension of time to file Notice of Appeal to the Court of Appeal u/s 11 of the appellate Jurisdiction Act No. 15 of 1979)

And

(In the matter of (HCT) Criminal Appeal No. 43 of 2000)

**MISANGU NTEMI.....APPLICANT**

**VERSUS**

**THE REPUBLIC.....RESPONDENT**

**RULING**

*17<sup>th</sup> March, 06 & 16<sup>th</sup> March, 09*

**MUJULIZI,J**

This is an application brought under section 11 of the Appellate Jurisdiction Act, Cap. 141 R.E. 2002, by which the Applicant seeks for leave of this Court to file his Notice of appeal to the Court of Appeal of Tanzania out of time.

He seeks to appeal against the decision of this Court (Hon. Lukelelwa,J.) which dismissed his appeal against conviction and thirty year sentence by the Shinyanga District Court on 18.02.2002.

The Application is supported by the applicant's affidavit deponed on 8<sup>th</sup> September, 2005.



He avers therein that the failure to file notice was due to the judgment, which was delivered in his absence being served on him late on 24/12/2004, when the Registrar issued a certificate of Court after appeal.

At the hearing of his application the applicant who appeared in person (under custody) adopted the affidavit without more.

The Respondent Republic represented by Mr. Mohamed Salum objected to the application.

However they did not file counter affidavit.

He submitted that according to Rule 61 of the Court of Appeal Rules 1979, Notice of Appeal had to be lodged within 14 days and that once filed, it constitutes the filing of the appeal.

Further that according to Rule 68 of the same Rules in case the appellant is a prisoner, the appeal is said to have been filed at the time such prisoner presents the notice to the officer In-charge of the Prison.

In this case the Applicant claims to have obtained copy of the judgment on 24/12/2004. However, the affidavit in support of this application was sworn on 8/09/2005, nine months after the prescribed time.

I am in agreement with the arguments put up by the learned State Attorney.

There was inordinate delay in bringing this application. The applicant has not even attempted to explain why it took him that long, between receiving copy of judgment and deciding to file this application.

The delay between receipt of judgment and filing the Notice is what was required to be explained in this case.

In the absence of such explanation this court would have nothing to consider.

Secondly, the application does not cite the Rule under which it is brought.

Thirdly, the applicant did not even attempt to show what part of the decision of this court he is aggrieved with, so as to establish a case for reasonable chances of success in case he is allowed to process his appeal out of time.

The application is devoid of any merit.

A handwritten signature in black ink, appearing to be 'A. C. ...', is written over the text 'The application is devoid of any merit.'

For all those reasons the application is hereby dismissed

A handwritten signature in black ink, appearing to be 'A.K. Mujulizi', written over a horizontal line.

**A.K. MUJULIZI**

**JUDGE**

**16/03/2009**