

<p>IN THE COURT OF APPEAL OF TANZANIA AT DODOMA CRIMINAL APPLICATION NO. 1 OF 2007 MSOFFE, J.A</p>	<p>1) HARUNI PIASON 2) IBRAHIM TANI VS DORINA NDALIJE (Application for leave to appeal to the Court of Appeal against the decision of the High Court of Tanzania at Dodoma by Masanche, J.)</p>	<p>1 - Rule 61(1) of the Court of Appeal Rules, 1979 whereby, the Notice of Appeal Institute the appeal.</p> <p>2 - Consequence of lodging a notice of appeal, where in Criminal matter, the High Court Registrar is duty bound to prepare a record of appeal in terms of rule 64(1) of the rules.</p> <p>3 - Section 6(7)(b) of the Appellate jurisdiction Act, of 1979 whereby an appeal lies to the Court of Appeal only if the High Court certifies that a point of law is involved.</p>
---	--	--

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

DOM CRIMINAL APPLICATION NO. 1 OF 2007

**1. HARUNI PIASON
2. IBRAHIM MTANI**



..... **APPLICANTS**

VERSUS

DORINA NDALIJE 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 9th day of May, 2007
in
Criminal Application No. 16 of 2005**

R U L I N G

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:-

- "(i) The applicants be granted a leave to appeal to the High Court of Tanzania Dodoma against the struck out of the application (conviction, sentenced, order).*
- (ii) A certificate of the court that there is a point of law in this application the failure/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).*

(iii) 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 application abide the result of the shid appeal. The application will be supported by the Affidavit of HARUNI PIASON AND IBRAHIM 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, J. 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.

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 High Court acting in original 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 appeal.

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.

J. H. MSOFFE
JUSTICE OF APPEAL

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

(Z. A. MARUMA)
DEPUTY REGISTRAR