

THE UNITED REPUBLIC OF TANZANIA

(JUDICIARY)

IN THE HIGH COURT- DISTRICT REGISTRY OF MUSOMA

AT MUSOMA

Misc. CRIMINAL APPLICATION No. 43 OF 2022

*(Arising from the District Court of Tarime at Tarime in
Criminal Case No. 282 of 2018)*

MSENA JOSEPH KIGOCHA APPLICANT

Versus

REPUBLIC RESPONDENT

RULING

23.01.2023 & 23.01.2023

Mtulya, J.:

Mr. Msena Joseph Kigocha (the applicant) has approached this court under section 362 (1) of the **Criminal Procedure Act [Cap. 20 R.E. 2022]** (the Act) asking this court to waive the requirement of the law under the cited provision to allow him to prefer an appeal without attaching copies of proceedings and judgment appealed against. According to the applicant, he has been following the said copies at the **District Court of Tarime at Tarime** (the district court) in the judgment of **Criminal Case No. 282 of 2018** (the judgment) since 2019 without any success.

However, the application was resisted by **Ms. Agma Haule** and **Mr. Felix Mshana**, learned State Attorneys, contending that the application is unknown to the law and cannot be granted.

In substantiating their submission, the dual submitted that attachment of copies of the said documents is very important and necessary as it is the requirement of the law and crucial in scrutinizing complaints registered in appeals brought in this court. According to the learned minds, the law in section 362 (1) of the Act has already received a precedent of the Court of Appeal in **Jafari Musa v. Director of Public Prosecutions**, Criminal Appeal No. 234 of 2019.

When the applicant was called to rejoin the submission of the learned State Attorneys, he briefly stated that the wrong in failure to supply copies of the proceeding and judgment was committed by the district court hence this court can grant an order to proceed without the cited copies.

The provisions of section 362 (1) of the Act has been enacted by the use of the following words:

*Every appeal **shall** be made in the form of a petition in writing presented by the appellant or his advocate, and every petition shall, **unless the High Court otherwise directs**, be accompanied by a copy of the proceedings judgment or order appealed against.*

(Emphasis supplied).

The bolded expressions: *shall* and *unless the High Court otherwise directs*, have already received interpretation of the Court of Appeal in the precedent of **Director of Public Prosecution v. Freeman Aikael Mbowe & Another**, Criminal Appeal No. 420 of 2018, in the following words displayed at page 20 of the judgment:

...it is settled that the use of the word shall in section 362 (1) of the CPA is permissive... a petition of appeal which is not accompanied by proceedings and an order appealed from cannot be rendered incompetent because section 362 (1) of the CPA bestows upon the High Court with judicial discretionary powers to direct otherwise in order to expedite the hearing of the criminal appeals...

However, in order to persuade this court to exercise such discretionary powers, the applicant must produce good reasons to persuade this court to decide in his favour. In the present application the record shows that the judgment of the district court was rendered down on 16th November 2018. The applicant had preferred notice of intention to appeal within time on 26th

November 2018 and requested for the copies of proceedings and judgment on 10th April 2019, but since then he had declined to make any follow ups of the same. While I am well aware of the need of speedy criminal appeals hearing, I hesitate to set a precedent of applicants who are not diligent, apathy, negligent or sloppy in prosecuting their actions that they intend to take.

The present applicant has not taken any action since April 2019 to show that he is vigilant in following up the cited copies for appeal purposes and is asking this court to invite and interpret the provisions of section 362 (1) of the Act in his favour, without registration of relevant materials. If such precedent is set, there will be influx of applicants asking this court to waive such requirement of the law, and that cannot be the intention of the drafters of section 362 (1) of the Act.

Having said so, I decline to grant the applicant's prayer and accordingly dismissed the application for want of registration of relevant materials in favour of the application.

It is so ordered.




F. H. Mtulya

Judge

23.01.2023

This Ruling was delivered in chambers under the seal of this court in the presence of the applicant, **Mr. Msena Joseph Kigocha** and in the presence of **Ms. Agma Haule** and **Mr. Felix Mshana**, learned State Attorneys, for the Republic, through teleconference attached in this court.



F. H. Mtulya

Judge

23.01.2023