

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA SITTING AT ARUA
MISCELLANEOUS CRIMINAL APPLICATION No. 0024 OF 2016

1. ACIKU ALIAS }
2. ASIBUKU MUZAMIL }..... APPLICANTS

VERSUS

UGANDA RESPONDENT

Before: Hon Justice Stephen Mubiru.

RULING

This is a joint application by two unrepresented convicts for leave to file an appeal out of time. The two applicants, together with six others, were tried by the Chief Magistrates Court of Arua for the offence of Arson and were each convicted and sentenced to three years’ imprisonment on 7th January 2016. Each of the applicants has sworn an affidavit in support of their respective applications.

The grounds advanced by the first applicant in the affidavit and in his submissions before court are that following his conviction, he was unable to file the appeal within the time allowed because he was impecunious. However, when he was later diagnosed with Hepatitis “B,” he considered it necessary to appeal since the prison conditions do not augur well with his medical condition.

On his part, the second applicant in his affidavit and submissions before court advanced the grounds that following his conviction and sentence, he could not appeal within the time allowed because he was impecunious, he had no contact with his relatives and was admitted in hospital on several occasions for cancer. He intends to appeal the decision because during the trial, he

was never given the opportunity to present his defence as he was in hospital the day the rest of his co-accused made their defence.

In her submissions opposing the application, Ms. Jamilar Faidha, State Attorney argued that the applications had no merit and were an attempt by the applicants to evade serving their sentence. She argued that the medical evidence attached to the respective affidavits indicates that the first applicant was diagnosed with Hepatitis “B” on 13th October 2016 while the second applicant was diagnosed with cancer in July 2016, in both cases, long after the time allowed for filing the appeals had elapsed. She prayed that the applications be dismissed.

Sections 28 (6) and 31 (1) of *The Criminal Procedure Code Act*, empower an appellate court, for good cause shown, to extend the time allowed for appeal. During the hearing of the application, it transpired that both applicants sought and were provided paralegal services within the prison during which they were advised of their right to appeal. However, each of them claims to have been under the misconception that they needed funds to enable them file their intended appeal. Even giving them the benefit of the doubt for having laboured under such a misconception, the submissions of the first applicant do not indicate that he had any reason in his mind at the time to challenge the decision on appeal. I am not persuaded that he was prevented by sufficient cause from appealing nor that he has any arguable grounds to present on appeal. His decision to appeal appears to be an afterthought. He has not shown good cause for extension of time to lodge the intended appeal and his application is accordingly dismissed.

As regards the second applicant, his submissions disclosed an arguable ground on appeal and this coupled with the fact of his medical condition during the trial, the benefit of the doubt of which he will be given, his application has merit and therefore is allowed.

The second applicant shall file his appeal within fourteen days from today. It is ordered accordingly.

Dated at Arua this 8th day of November 2016.

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Stephen Mubiru,

Judge