

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CRIMINAL DIVISION
CONSOLIDATED HCT-00-CR-CM-0016 AND 17 OF 2021
(Arising from- Wakiso Criminal Case No.832 and 825 of 2020)

&

MWESIGYE ADAMS.....APPLICANT

VERSUS

UGANADA.....RESPONDENT

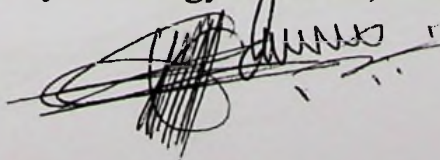
BEFORE: THE HON. JUSTICE TADEO ASIIMWE

RULING

The above consolidated applications were brought by way of notice of motion seeking for leave of court to appeal out of time against judgements and sentences in criminal cases No.832 of 2020 and in criminal case No. 825 of 2020.

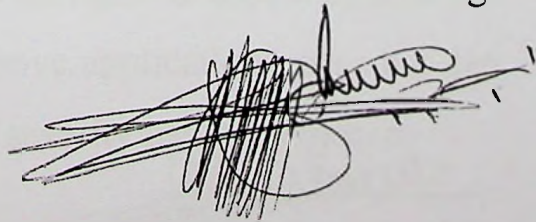
At the commencement of hearing, court ordered a consolidation of the two applications arising from the same prayers, the same grounds and were brought by the same applicant.

The grounds of these applications are contained in the motions and in the affidavits in support of the applications sworn by Mwesigye Adams, and briefly are as follows.



1. That the applicant was charged in criminal case no.832 of 2020 with four counts of aggravated trafficking, was convicted on all counts and was sentenced to 5 years on count one and two, one year on count three and one year on counts three and four to run concurrently.
2. That on the same day he was charged vide criminal case no 825 of 2020 with two counts of obtaining money by false pretense, convicted and sentenced to two years on one and three years on the 2nd count to run concurrently.
3. That time with in which to appeal expired before he filed a notices of appeal in both cases since he was not represented in the in the trial court.
4. That government restrictions on covid 19 made it hard for the applicant to file a notice of appeal within the prescribed times since he had no lawyer or relatives visiting to help him file the appeal.
5. That the intended appeals have a likelihood of success and that the application was brought without unreasonable delay.

The applicant was represented by Counsel Rukundo Ibrahim while the learned state attorney Tukamushaba Amelia Represented the respondent. Both counsel made oral submissions, which I shall consider in this ruling.

A handwritten signature in black ink, appearing to be 'Rukundo Ibrahim', with a large, stylized flourish underneath.

Counsel for the applicant submitted that the applicant was not represented in the trial court and had no access to any lawyer since it was covid time and that the appeals have a likelihood of success.

In reply, the learned state attorney submitted that courts have been operating since august, 2020. That there is no evidence of blockage by prison authorities and therefore there is no way covid restrictions would have blocked the applicant from filling a notice of appeal. She further submitted that the applicant has no right of appeal since he pleaded guilty in both cases. That there is no sufficient reason to warrant extension of time since the applicant was not vigilant to file the notices of appeal in time.

RESSOLUTION

Sections 28(6) and 31(1) of the Criminal procedure code Act, empowers an appellate court for good cause shown, to extend the time allowed for appeal.

The applicant's grounds in this application are that he was prevented by the covid restrictions to file his appeal in time and that his intended appeals have a likelihood of success.

First I wish to state that from the lower court record, it is evident that the applicant pleaded guilty to both charges. By virtue of section 204 of the Magistrate Court's Act, the applicant has no right to appeal against the judgements in the two cases where the above applications arise but can appeal only on the legality of the plea and severity off the sentence.

Unfortunately, there is no Memorandum of Appeal attached to both applications for court to examine the intended grounds of appeal although it is not a requirement in applications of this nature. This court is left with evidence from pleadings and the lower court record.

The applicant stated in his affidavit that he intends to appeal against the judgements, convictions and sentences in the criminal cases where these applications arise without highlighting any of the intended grounds.

It is therefore difficult for court to make an informed assessment of likelihood of success of the applicant's intended appeals in the absence of such information.

The learned state attorney submitted that by august 2020 the courts were operational and the advocates were allowed to visit their clients in prison.

I agree with that positions.

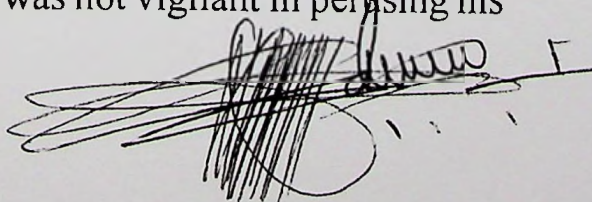
In addition to the above, although the prisons were strict on visitation of prisoners, prisons made sure that they acted as a link between the lawyers and the prisoners. There are also Justices of Peace in prisons who help inmates to file documents in court.

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke.

Last but not least, as already stated above the applicant pleaded guilty and only has a right to appeal against severity of sentence and the legality of the plea.

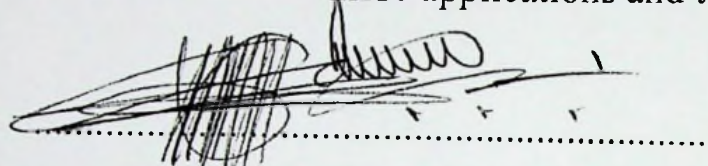
In the 1st charge the applicant was sentenced to 5 years on count one and two, 1 year on count three and 1 year on counts three and four to run concurrently for the offences of aggravated trafficking whose maximum sentence is death. In the second case, the applicant was sentenced to 2 years and 1 year to run concurrently for the offence of obtaining money by false pretense whose maximum sentence is 5 years on his own plea. For all intents and purposes, there is minimal likelihood of success of the intended appeals as argued by the Respondent's counsel considering the sentences imposed and the maximum sentences.

I am not persuaded that the applicant was prevented by any sufficient cause from appealing nor that he has any arguable grounds to present on appeal. Basing on the record as regards the sentence in both charges, there is less likelihood of success in the intended appeal. The applicant was simply not vigilant. From the lower court record there is evidence that the applicant made similar applications vide Ma No.1 of 2021 and No.3 of 2021 in the lower court but failed to pursue them and they were dismissed. This is another indicator that the applicant was not vigilant in perusing his right of appeal.

A handwritten signature in black ink, appearing to be a stylized name, possibly "J. M. M.", with a horizontal line underneath it.

The applicant's decision to appeal appears to be an afterthought. The applicant has not shown good cause for extension of time to lodge the intended appeal.

I find no merit in these applications and the same are hereby dismissed.

A handwritten signature in black ink, appearing to read 'Tadeo Asiimwe', is written over a horizontal dotted line. The signature is somewhat stylized and includes some scribbles.

Tadeo Asiimwe

● Judge

26/03/2020