

IN THE COURT OF APPEAL
ON APPEAL FROM THE HIGH COURT

CRIMINAL APPEAL AAU 101 of 2010
(High Court HAC 39 of 2010)

BETWEEN : **JONE CAMA** *Appellant*

AND : **THE STATE** *Respondent*

Coram : **Chandra RJA**

Counsel : **Appellant in person**
Mr M. Korovou for the Respondent

Date of Hearing : **8 July 2013**

Date of Ruling : **5 August 2013**

RULING

1. The Appellant was charged with one count of attempted rape contrary to section 151 of the Penal Code, Cap.17.
2. The Appellant had attempted to rape a 2 year old girl sleeping in the same house where he was staying and he pleaded guilty to the charge and was sentenced on 25th May 2010 to a term of 7 years imprisonment with a non parole period of 6 years.
3. The Appellant made an appeal on 28th November 2010 and sought leave to appeal on the following grounds:
 1. That the trial conducted by the learned trial Judge directly violated his rights which are protected under S 29(1) of the Bill of Rights.

2. That no trial was conducted by the learned Judge upon the evidence given in the case also was accompanied by his remorseful action and most particular for his earlier plea which was completely ignored.
 3. That he was 51 years old and a first offender.
 4. That the learned Judge sentencing him for seven years with a fixed period of 6 years in which he was not eligible to be considered for parole which is excessively harsh and oppressive.
 5. That this error is bad in law and that this court has the power to review and rectify the anomaly.
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4. No reasons have been adduced by the Appellant regarding the delay in submitting his appeal which is late by 5 months.
 5. The Appellant has made an application for retrial by letter dated 14th December 2010 on the basis that he had been denied a fair trial and filed a further petition of appeal on 14th February 2012.
 6. The Appellant has urged that his late appeal dated 28th November 2010 be admitted. The Appellant should have filed his appeal within 30 days of the sentence which was handed down to him on the 25th of May 2010 in terms of Section 26 of the Court of Appeal Act (Cap.12). As stated earlier he has not set out any reasons for the delay to have extension of time to appeal.

7. In **Isimeli Seresere v State** [2008] AAU 0036/04 it was stated by Powell J : *“The practice of the Court is to accept that delays of up to 3 months are excusable where the appellant has been in prison since conviction, if there is merit.”*
8. In the present case as set out above the delay is over 5 months in filing the appeal and it would be necessary to consider whether there is any merit in the appeal.
9. The Appellant who had been represented by the Legal Aid Commission had pleaded guilty to the charge and had admitted the facts. He alleges that there has been a violation of Section 29(1) of the Bill of Rights. Section 29(1) provides that every accused must be afforded a fair trial. In the present case the charge was made known to the Appellant, he was represented by Counsel, the facts were read out to him which he admitted. He pleaded guilty to the charge. In such circumstances it cannot be said that he had not had a fair trial. There is no merit in this ground.
10. His complaint that there was no trial on the evidence has no basis as he was represented by Counsel, he was aware of what went on in Court and he cannot now be heard to say that there was no trial.
11. His early guilty plea, his age and the fact that he was a first offender were all taken into account and enabled him to get a reduction of three years from the starting point of ten years imprisonment that the learned trial Judge commenced when sentencing the Appellant.
12. In the circumstances of the case, the sentence imposed on the Appellant cannot be said to be harsh. Considering the nature of the offence and the age of the victim the learned trial judge started at the high end of the scale when commencing the sentence. The non-parole

period of six years was a limit that the trial Judge could decide in his discretion having considered the nature of the offence committed by the Appellant.

13. A consideration of the grounds urged as stated above shows that there is no merit in the appeal of the Appellant and therefore his delay in filing his appeal cannot be excused and he is denied an extension of time.

14. In addition to the appeal being delayed the grounds urged have no merit and are frivolous which would attract the application of Section 35(2) of the Court of Appeal Act (Cap.12), where an application for leave to appeal can be dismissed by a single judge if it is frivolous and vexatious, and I accordingly dismiss the appeal.

Order of Court

1. Application for leave to appeal for extension of time is refused.

2. The application for leave to appeal is dismissed in terms of Section 35(2) of the Court of Appeal Act (Cap.12) as it is frivolous and vexatious.

Suresh Chandra
Resident Justice of Appeal