

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

(CORAM: MUNUO, J.A., LUANDA, J.A. And MJASIRI, J.A.

CRIMINAL APPEAL NO. 253 OF 2009

**KENEDY MWAKATIKA.....APPELLANT
VERSUS
THE REPUBLIC.....RESPONDENT**

**(Appeal from the decision of High Court of Tanzania
at Mbeya)**

(Mackanja, J)

**Dated 2nd day of December, 2002
In
Misc. Criminal Application No. 83 of 2001**

RULING OF THE COURT

22ND & 23RD July, 2010

LUANDA, J

In the District Court of Mbeya sitting at Mbeya, the above named appellant was charged with rape. He was convicted as charged and sentenced to thirty (30) years imprisonment. The trial court informed him

his right to appeal to the High Court. The judgment of the District Court was delivered on 13/12/1999.

On 14/11/2001 after a period of more than one year, the appellant filed a chamber application supported by an affidavit in the High Court for leave to appeal out of time. The said application did not cite any enabling provision of any law. The High Court (Mackanja, J) however, entertained the application.

The High Court made the following observations in its Ruling of 2/12/2002. One, it did not buy the appellant's story that he was sick for all that period. In other words the High Court found out that no sufficient reasons were adduced for such a delay: Two, even if the sickness of the appellant was to be taken into account, the intended appeal would be time barred as no notice of appeal was lodged. The High Court concluded, we quote:-

"Upon the two considerations herein (above) referred to the appeal lacks merits and it is accordingly dismissed."

We have already seen that the Chamber application did not cite any enabling provision of any law from which the High Court derived its power to entertain the application. What is the consequence of such failure?

It is now settled that non citation or wrong citation renders the matter before the Court incompetent and is liable to be struck out. In **Magwila Mwashela VR** Criminal Appeal No 76 of 2007, Court of Appeal Mbeya the Court said, we quote;

“Though the principle emanates from Civil Proceedings, the same is applicable to Criminal proceedings as well.”

Since the High Court was not properly moved, the learned judge ought not to have entertained the application. The High Court proceedings are a nullity. The matter before us is incompetent.

Exercising our revisional powers as they are provided under section 4(2) of the Appellate Jurisdiction Act, Cap 141 the proceedings of the High Court are hereby quashed and orders made therein set aside.

As regards the purported appeal, the same is struck out under Rule 4(2) (a) of the Court Rules, 2009. The appellant is at liberty to start afresh his application for leave to lodge a notice of appeal out of time and to appeal out of time in the High Court.

It is so ordered.

Dated at Mbeya this 22nd day of July, 2010.

E. N. MUNUO
JUSTICE OF APPEAL

B. M. LUANDA
JUSTICE OF APPEAL

S. MJASIRI
JUSTICE OF APPEAL

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


I. P. Kitusi
SENIOR DEPUTY REGISTRAR