

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

(RAMADHANI, C. J.; KIMARO, J. A.; And MANDIA, J. A.)

**CRIMINAL APPEAL NO. 190 OF 2006
BETWEEN**

JULIUS RWE GASIRA..... APPELLANT

AND

REPUBLIC RESPONDENT

**(Appeal from the Judgment of the High Court of Tanzania at
Bukoba,)**

(Luanda, J.)

dated the 18th day of March, 2006

in

Criminal Appeal No. 47 of 2005

JUDGMENT OF THE COURT

.....

13th October & 18th October , 2010

RAMADHANI, C. J.:

Julius Rwegasira, the appellant, was convicted of raping Nutina d/o Suleiti, a girl 12 years old, at Magunge Village, Karagwe District, Kagera Region, and was imprisoned for life. His appeal to the High Court at Bukoba was struck out by LUANDA, J., as he then was, because there was

no notice of intention to appeal though the appellant said that he had given it to the Prison Authorities. However, LUANDA, J. reduced the sentence to 30 years.

The appellant has preferred this appeal complaining about the proceedings in the District Court. Mr. Edgar Luoga, Senior State Attorney for the respondent/Republic, came prepared to support the appeal and to oppose the conviction and the sentence. We asked him whether we could hear an appeal straight from the District Court. He rightly replied that we could not and that the appeal ought to have been against the striking out of his first appeal. He cautioned that the appellant is a layman and unrepresented.

Mr. Luoga pointed out that the High Court could have given the appellant an opportunity to establish that he gave his notice of intention to appeal to the Prison Authorities. In any case, he submitted, the learned judge could have admitted the appeal under s. 361(2) of the Criminal Procedure Act, [Cap 20 RE 2002] which provides:

The High Court may, for good cause, admit an appeal notwithstanding that the period of limitation prescribed in this section has elapsed.

We agree with Mr. Luoga that the learned Judge could have done that and he had a good cause for doing so. In fact in the original court file we found the appellant's application to the High Court at Bukoba, soon after the decision of LUANDA, J., asking for enlargement of time within which to give a notice of intention to appeal but it has not been acted upon. Thus the appellant has not been idle and equity aids the vigilant.

We, therefore, exercise our powers under Rule 4(1) of The Tanzania Court of Appeal Rules, 2009, [GN No. 368 of 06/11/09] which provides in the relevant portion as follows:

... the Court may at any time, direct a departure from these Rules in any case in which this is required in the interests of justice.

We depart from all applicable Rules and treat this as an appeal from the order of LUANDA, J. striking out the appellant's appeal. Now that we are seized with an appeal from the High Court we invoke the provisions of s. 4(2) of the Appellate Jurisdiction Act [Cap 141 RE 2002] to revise the orders of the learned Judge. That section provides:

For all purposes of and incidental to the hearing and determination of any appeal in the exercise of the jurisdiction conferred upon it by this Act, the Court of Appeal shall, in addition to any other power, authority and jurisdiction conferred by this Act, have the power of revision and the power, authority and jurisdiction vested in the court from which the appeal is brought.

We set aside the order of the learned judge altering the punishment of life imprisonment to one of thirty years and we restore the punishment of the District Court of life imprisonment. And, after doing that, by virtue of the same s. 4(2), we step into the shoes of the High Court and do what it could have done, that is, we admit the appeal against the decision of the District Court under s. 361(2) of the Criminal Procedure Act.

The High Court of Tanzania at Bukoba shall hear the appeal against the decision of the District Court of Karagwe in Criminal Case No. 227 of 2002. It is so ordered.

DATED at MWANZA this 18th day of October, 2010.

A. S. L. RAMADHANI
CHIEF JUSTICE

N. P. KIMARO
JUSTICE OF APPEAL

W. MANDIA
JUSTICE OF APPEAL

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



P. W. Bampikya

SENIOR DEPUTY REGISTRAR