

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

(CORAM: OTHMAN, C.J., RUTAKANGWA, J.A., And ORIYO, J.A.

CRIMINAL APPEAL NO. 287 OF 2008

**AWADHI ABRAHAMANI WAZIRI.....APPELLANT
VERSUS
THE REPUBLIC.....RESPONDENT**

**(Appeal from the conviction of the High Court of Tanzania
at Arusha)**

(Msoffe, J.)

**Dated 17th February, 2004
in
Criminal Appeal No. 73 of 2003**

RULING OF THE COURT

2ND & 9TH November, 2011

RUTAKANGWA, J.A.:

The appellant first appeared before the Arusha Court of Resident Magistrate (the trial Court) on **16th March, 2001**, facing a charge of Armed Robbery. He denied the charge. He was never granted bail. He remained in remand prison until 1st August, 2003 when the trial court convicted him of Attempted Robbery. He was sentenced to fifteen years imprisonment and six strokes of the cane.

Aggrieved by the conviction and sentences, he unsuccessfully appealed to the High Court at Arusha. The High Court judgement was delivered in his absence, although his counsel Mr. F. Kinabo was present, on **17th April, 2004**. Apparently, Mr. Kinabo never informed him at all of the outcome his appeal.

Under Rule 61 (1) of the Tanzania Court of Appeal Rules, 1979 (the Rules) which were in operation then, the appellant, if dissatisfied with the judgement of the High Court, as it is now obvious that he was, had to lodge a written Notice of appeal to this court, within fourteen (14) days of that decision. He did not do so. Instead, he lodged his Notice of Appeal on **19th May, 2008**. That was four years and one month after the date of the impugned High Court judgement. Hence this appeal.

When the appeal came before us for hearing, Mr. Zakaria Elisaria, learned State Attorney, on behalf of the respondent Republic, rose to argue one point of preliminary objection, notice of which he had earlier on lodged. He predicated his brief but precise argument on Rule 61 (1) of the Rules. He contended that since the lodged notice of appeal instituting this appeal was lodged beyond the prescribed 14 days, the appeal is incompetent and should be struck out.

The appellant, who appeared before us unrepresented, did not resist the preliminary objection as such. But he had his own explanation, which was in the form of a "confession and avoidance". He conceded that his notice of appeal was lodged on 19th May, 2008. To him, this was within the prescribed period of 14 days, as he became aware, for the first time, of the outcome of this appeal on 16th May, 2008. He had to communicate directly with the District Registrar, he said, to be availed of information regarding the fate of his appeal. Under these circumstances, he prayed for the Court's understanding and appreciation of his plight and have his appeal heard on merit.

There is no gainsaying that the appellant's notice of appeal was apparently lodged out of time. We have already shown, that there was a delay of over four clear years. Whether or not the appellant is to blame for this apparent inordinate delay, is not of moment at this stage. As Mr. Zakaria correctly submitted, the law then (and even now) was that the fourteen-day period began to run from the date of judgement and not from the date when the aggrieved party became aware of the decision of the High Court.

We have found the material facts of this purported appeal similar to the facts in the case of **DAVID MATIKU V. R.**, Criminal Appeal No. 265 of 2006 (unreported). In that case the High Court judgement was delivered on **20/9/2006**, in the absence of the appellant. The appellant became aware of the results of his appeal on **02/10/2006**. Acting promptly, as the appellant herein did, he launched his notice of appeal on the same day. However the same was not endorsed by the prison officer-in-charge in accordance with Rule 68 (3) of the Rules and so it was lodged on **13/10/2006**. The respondent Republic successfully challenged the competence of the appeal instituted by that notice of appeal.

In its ruling dated 23rd February, 2011, striking out the appeal on the ground of incompetence, the Court succinctly said:

"In the present case, the date of the decision of the High Court was 20/9/2006. The appellant has complained that he was not present when judgment was delivered, impliedly inviting us to exclude such time until he came to know of it. But under Rule 68 (2)...there is no room for excluding such time... So, in this case, time began to run on 20/9/2006, which was the date of the decision. And as rightly pointed out by Mr. Mkemwa, the 14 days lapsed on 3/10/2006. "

We find this to be a correct and lucid exposition of the law on the issue and we fully associate ourselves with it. We shall accordingly apply it in our determination of the point of preliminary objection raised by the respondent Republic.

On the basis of the undisputed facts and the above stated clear position of the law, we hold without any demur, that the notice of appeal which instituted this purported appeal was lodged out of time. It is settled law that a notice of appeal lodged beyond the prescribed period of 14 days is incapable of instituting a competent appeal in this Court unless a prior extension of time had been sought and obtained either from the High Court under section 11(1) of the Appellate Jurisdiction Act, Cap.141 (the Act) or under Rule 8 (now Rule 10) of the Rules.

In view of the above, we hereby uphold the preliminary objection and rule that this purported appeal is incompetent. The same is accordingly struck out as urged by Mr. Zakaria.

Although we have struck out the "appeal", it is worth noting in passing that that is not the end of the road for the "appellant". If he still

desires to appeal to this Court, he is at liberty to file a fresh notice of appeal after obtaining an extension of time to do so, either from the High Court under S.11(1) of the Act or from this Court under Rule 10 of the Tanzania Court of Appeal Rules, 2009. Since the "appellant" has been in continuous prison custody from March, 2001, we direct that once the said application is presented to the High Court, it must be given top priority and be determined as expeditiously as possible.

It is so ordered.

DATED at **ARUSHA** this 4th day of November, 2011.

M. C. OTHMAN
CHIEF JUSTICE

E. M. K. RUTAKANGWA
JUSTICE OF APPEAL

K.K. ORIYO
JUSTICE OF APPEAL

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




Z. A. Maruma
DEPUTY REGISTRAR