

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

(CORAM: RUTAKANGWA, J.A., LUANDA, J.A., And MJASIRI, J.A.)

CRIMINAL APPEAL NO. 81 OF 2012

CHRISTIAN SANGAAPPELLANT

VERSUS

THE REPUBLIC RESPONDENT

**(Appeal from the Decision of the High Court
of Tanzania at Songea)**

(Manento, J.)

dated the 30th day of April, 2003

in

Criminal Appeal No. 45 of 2000

RULING OF THE COURT

29th& 31ST July, 2013

LUANDA, J.A.:

This purported appeal was instituted when the then Court of Appeal Rules, 1979 were in place. In terms, of Rule 61 (1) of the said Rules, if a person desired to appeal to this Court he was required to give a notice of appeal within fourteen days from the date of the decision and such notice shall institutes an appeal.

When this purported appeal was called on for hearing, the Court wished to satisfy itself whether the notice of appeal was lodged within the prescribed time of fourteen days from the date of the decision. We paused that question because the decision of the High Court (Manento, J) was delivered on 30/4/2003 whereas the notice of appeal was lodged, in terms of Rule 68 (1) of the Court of Appeal Rules, 1979, it was endorsed by the officer in charge of prison, on an unknown date but in the month of November, 2005. That an unknown date as endorsed by the said officer in charge of Prison is deemed to have been the date of filing of the notice of appeal.

The notice of appeal, notwithstanding the exact date lodged, was filed beyond the prescribed time of fourteen days from the date of the decision.

The appellant readily conceded that he was late to file his notice of appeal. He however, prayed for Court's indulgence to allow his appeal be determined as he has been in prison for more than 13 years.

Mr. Maurice Mwamwenda learned Senior State Attorney on the other hand also expressed similar view that the notice of appeal was filed outside the prescribed time. He said there is no appeal before the Court. He prayed the same to be struck out.

From the foregoing, therefore it is clear that the notice of appeal was filed beyond the prescribed time of fourteen (14) days from the date of the decision contrary to Rule 61 (1) of the then Court of Appeal, Rules. 1979. And since a notice of appeal institutes an appeal, it follows that there is no valid appeal before the Court. The purported appeal ought to be struck out. However, we refrained ourselves from making such an order for the reason to follow.

The "appellant" has stayed in prison for a period of more than 13 years. We think this is a fit case to invoke Rule 47 of the current Court of Appeal Rules, 2009 and exercise our discretion in order to achieve substantive justice to grant him an extension of time so as to enable him file a notice of appeal out of time. The Rule reads:-

"47. Whenever application may be made either to the Court or the High Court, it shall in the first instance be made to the High

Court or tribunal as the case may be, but in any Criminal matter the Court may in its discretion, on application or of its own motion give leave to appeal or extend the time for the doing of any act, notwithstanding the fact that no application has been to the High Court.”

In view of the above, we allow the “appellant” to file his notice of appeal within 30 days from the date of delivery of this ruling.

Order accordingly.

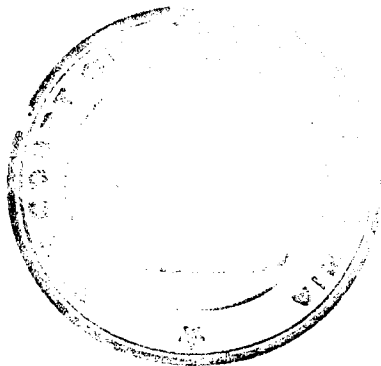
DATED at IRINGA this day 30th July, 2013

E. M. K. RUTAKANGWA
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.



M.A. MALEWO
DEPUTY REGISTRAR
COURT OF APPEAL