

IN THE COURT OF APPEAL OF TANZANIA

AT MBEYA

(CORAM: MASSATI, J.A., ORIYO, J.A. And MUSSA, J.A.)

CRIMINAL APPEAL NO. 19 OF 2015

SAIMON MWAJANGA.....APPELLANT

VERSUS

THE REPUBLIC.....RESPONDENT

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

(Chocha, J.)

dated the 15th day of July, 2014

in

Misc. Criminal Application No. 52 of 2012

JUDGMENT OF THE COURT

18th & 20th August, 2015

ORIYO, J.A.:

On 26/6/2013, the appellant was convicted as charged of the offence of rape by the District Court of Mbeya and sentenced to the statutory minimum punishment of thirty years imprisonment, in terms of sections 130(1) and 131 of the Penal Code, Cap. 16, (R.E. 2002). In order to appreciate the proceedings in the courts at various levels and the ultimate decision of this Court, we find it appropriate to set out the

chronological order of events which formed the basis of the appeal before the Court.

The appellant, being dissatisfied, with the conviction and sentence in the trial court, decided to appeal to the High Court. In the meanwhile, the law of limitation caught up with him unaware, when he was informed that the prescribed period of ten (10) days within which to give a notice of his intention to appeal to the High Court had expired, in terms of section 361 (1) (a) of the Criminal Procedure Act (CPA). His first attempt to have the High Court enlarge the time within which to give the notice of appeal was in Miscellaneous Criminal Application No. 55 of 2003, lodged on 25/9/2003. Apparently, the respondent Republic did not support the application. By an order of the High Court dated 23/4/2007, the application was dismissed, for reasons which were reserved to a future date.

Undaunted, the appellant lodged Criminal Appeal No. 427 of 2007 in this Court against the order of the High Court dated 23/4/2007. When the appeal came up for hearing the Court found the appeal prematurely

before it, in the absence of reasons reserved by the High Court for dismissing the application for enlargement of time on 23/4/2007.

This Court concluded its decision thus: -

*"For the above reasons, we hereby **direct that the record should be remitted to the High Court with directions to complete its decision before this appeal can be heard.**"*

To us, in view of the clear language of the Court order, the hearing of **Criminal Appeal No. 427 of 2007** was adjourned, pending availability of the reasons from the High Court of its order of 23/4/2007.

Finally, the reasons for the decision of the High Court dated 23/4/2007, were given on 30th May, 2013.

Unrelenting, the appellant returned to the High Court, again prematurely, on 27/9/2012, this time he was armed with Misc. Criminal Application No. 52 of 2012 for the extension of time to file a notice of appeal to the High Court out of time. We say "prematurely" because by 27/9/2012, when the application was filed, the High Court had yet to assign its reasons for the dismissal order of 23/4/2007. On 15/7/2014,

the High Court, (Chocha, J.) correctly, in our view, struck out the application as misconceived. In his concluding remarks, the learned judge stated the following: -

"Having now assigned the reserved reasons as directed, the High Court had its job done. The immediate obligation now is to forward the High Court records together with the reasons of its judgment to the Court of Appeal of Tanzania, for its necessary action particularly the determination of the still pending Criminal Appeal No. 427/2007. As matters stand now, there is no more job to be done by this Court. The application is misconceived. It is accordingly struck out."

Understandably, the High Court order dated 15/7/2014 did not augur well with the appellant. He rushed back to the High Court to file a notice of appeal on 28/7/2014 against the decision of Chocha, J; hence the appeal before us.

When the appeal was called on for hearing, the appellant who appeared before the Court in person, unfended, had nothing useful to

tell us on the merits of the appeal. He asked for the learned respondent Republic to submit first while reserving his right of reply in the event the need arises. In his brief but focused submissions, Mr. Joseph Pande, learned Principal State Attorney who appeared for the respondent Republic, submitted that the application before Chocha, J. was misconceived for two reasons. One, that the learned judge could not have made a decision on a matter already determined by a fellow Justice of the High Court. Two, that the Court of Appeal had already given directions as to what ought to be done. The learned Principal State Attorney advised that the appellant should exercise patience and wait for the High Court to issue relevant directions to the trial court before returning to this Court.

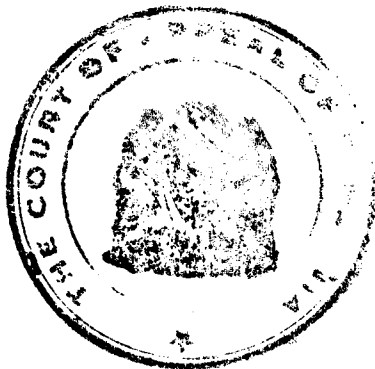
On our part, we are in agreement with the learned Principal State Attorney that the appeal before us is misconceived as was Misc. Criminal Application No. 52 of 2012 in the High Court.

In view of the **status quo** established, where all matters pending in courts have been concluded save for Criminal Appeal No. 427 of 2007; we think what remains now are some administrative procedures to be

is expeditiously dealt with to conclusion.

In the event, we are constrained to strike out the purported appeal. Further, we order the record to be remitted to the High Court expeditiously for the preparation of the record in Criminal Appeal No. 427 of 2007, so that it can be determined on merit.

DATED at **MBEYA** this 19th day of August, 2015.



S. A. MASSATI
JUSTICE OF APPEAL

K. K. ORIYO
JUSTICE OF APPEAL

K. M. MUSSA
JUSTICE OF APPEAL

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

A handwritten signature in black ink, appearing to read "P. W. Bampihya".

P. W. BAMPIKYA
SENIOR DEPUTY REGISTRAR
COURT OF APPEAL