IN THE COURT OF APPEAL OF TANZANIA
AT IRINGA

(CORAM: LUANDA, J.A., MZIRAY, J.A. And NDIKA, J.A.)

CRIMINAL APPEAL NO. 20 OF 2016

JORDAN KOMBA ..... APPELLANT

VERSUS

THE REPUBLIC ..... RESPONDENT

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

(Fikirini, J.)

Dated the 25th day of June, 2014

In

Misc. Cr. Application No. 28 of 2013

RULING OF THE COURT

11th & 15th May, 2018

LUANDA, J.A.:

JORDAN KOMBA (hereinafter referred to as the Appellant) was charged in the District Court of Songea with rape c/ss 130(1) and (2) (a) and 131(1) of the Penal Code, Cap. 16 R.E. 2002.

The particulars of the offence were that the appellant who was a resident of Bombambili within Songea Municipality unlawfully had carnal knowledge of a girl of 14 years of age! After full trial, the appellant was convicted as charged and sentenced to 30 years imprisonment.

Dissatisfied with the finding of the trial Court, the appellant unsuccessfully "appealed" to the High Court of Tanzania (Kaganda, J.) at Songea. Apart from confirming the sentence of 30 years imprisonment, the High Court in addition imposed twelve strokes of the cane and ordered the appellant to pay Tsh. 700,000/- to the victim of rape as compensation.

The appellant was aggrieved, he appealed to the Court. However, the appeal was not heard on merit as the Court discovered the High Court to have entertained the appeal without lodging a notice of appeal. The proceedings of the High Court were quashed and the purported appeal was struck out for being incompetent. The appellant did not give up, he started the process of appeal in the High Court afresh.

However, the record shows that at one time the appellant simultaneously filed an appeal in the Court as well as an application for extension of time in the High Court which is not proper. All the same so long as the appellant was late to institute his appeal in the High Court, he was required to seek leave of the High Court so that he could be allowed first to lodge his notice of appeal out of time and then file his appeal.

Indeed, the appellant applied for extension of time but when granted he did not file the notice of appeal within the time extended. So, he kept on seeking extension of time to lodge notice of appeal out of time and the High Court granted. At long last, the High Court (Fikirini, J.) refused to grant him extension of time to file notice of appeal out of time.

Aggrieved, the appellant has come to this Court on appeal to challenge that refusal.

The appellant who appeared in person and so unrepresented fended for himself. The respondent/ Republic was represented by Ms Hellen Chuma and Ms Amina Mawoko both learned State Attorneys.

Before we went to the merit or otherwise of the appeal, the Court wished to satisfy itself first as to whether the High Court when entertaining the application for extension of time to file notice of appeal was properly moved. We posed that question because both the Chamber Summons and the Ruling refer to s. 361 of the Criminal Procedure Act, Cap. 20 R.E. 2002 without more as the enabling provision. S. 361 of the CPA has two subsections as follows:-

361(1) Subject to subsection (2), no appeal from any finding, sentence or order referred to in section 359 shall be entertained unless the appellant:-

(a) has given notice of his intention to appeal within ten days from the date of the finding, sentence or order or, in the case of a sentence of corporal punishment only, within three days of the date of such sentence; and

(b) has lodged his petition of appeal within forty-five days from the date of the finding, sentence or order.

save that in computing the period of forty-five days the time required for obtaining a copy of the proceedings judgment or order appealed against shall be excluded.

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

Responding, Ms. Chuma informed the Court that the High Court was not properly moved. The application ought to have cited subsection 2 of s. 361 of the CPA as the enabling provision. Because the appellant did not cite the enabling provision, the proceedings were a nullity. She prayed that the Court to exercise its revisonal powers provided under s. 4(2) of the Appellate Jurisdiction Act, Cap. 141 R.E. 2002 and quash the proceedings. The appellant if he wishes may go back to the High Court and start the process afresh.

On the other hand the appellant being a layman, not learned in law, had nothing useful to contribute on the point of law raised.

As stated earlier on the appellant cited s. 361 of the CPA without showing the relevant subsection involved in an application of this nature. It is now settled that failure to cite the enabling provision of law on which the Court derives its jurisdiction renders the matter incompetent.

[See **William Ndigu @ Ngoso v. R.**; Criminal Appeal No. 9 of 2011 (unreported).]

Since in this case the enabling provision was not cited, it is clear that the High Court lacked authority to entertain the matter. It follows therefore that the entire proceedings are a nullity.

We agree with Ms. Chuma. The proceedings are declared a nullity. The same are quashed. The appellant may start afresh the process in the High Court to appeal to that court against the decision of the trial court, if he so wishes.

Order accordingly.

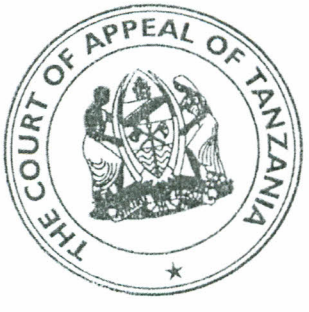
DATED at **IRINGA** this 14th day of May, 2018.

B. M. LUANDA
JUSTICE OF APPEAL

R. E. S. MZIRAY
JUSTICE OF APPEAL

G. A. M. NDIKA
JUSTICE OF APPEAL

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



E. F. FUSSI
DEPUTY REGISTRAR
COURT OF APPEAL