

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

**(CORAM: LUANDA, J.A., MMILLA, J.A., And NDIKA, J.A.)**

**CRIMINAL APPEAL NO. 16 "A" OF 2016**

**SONG LEI ..... APPELLANT**

**VERSUS**

**THE REPUBLIC..... RESPONDENT**

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

**(Levira, J.)**

**dated the 8<sup>th</sup> day of November, 2016**

**in**

**Economic Crime Appeal No. 16 of 2016**

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**RULING OF THE COURT**

9<sup>th</sup> & 13<sup>th</sup> February, 2018

**LUANDA, J.A.:**

The appellant herein with three others, (henceforth the three), were charged in the Resident Magistrate's Court of Mbeya at Mbeya with three counts under the Economic and Organized Crime Control Act, Cap 200 R.E. 2002 after the Director of Public Prosecutions (the DPP) had consented their prosecution and that they be prosecuted in that court. After the trial, all four were convicted as charged and sentenced accordingly. All were aggrieved by the finding and sentences of the trial

court. They appealed to the High Court of Tanzania (Mbeya Registry). The three were successful while the appellant was not, hence this second appeal.

When the appeal came for hearing, Mr. Achilles Mulisa, learned Senior State Attorney assisted by Mr. Simon Wankyo, learned State Attorney for the respondent/Republic prayed for an adjournment. The reason he advanced was that the DPP is also aggrieved by the finding of the High Court in setting free the three and that he has already given a notice of appeal. Under the aforesaid circumstances he said it is prudent to adjourn this appeal so that it be consolidated with the appeal lodged by the DPP under Rule 69 (2) of the Court of Appeal Rules, 2009 (the Rules). He further informed the Court that the three are in Keko Prison Dar es Salaam in connection with another matter.

Mr. Victor Mkumbe who was assisted by Ms. Irene Mwakyusa both learned advocates for the appellant vigorously resisted the prayer for an adjournment. He gave three reasons. **One**, the notice of appeal of the DPP does not include the appellant. In other words the appellant is not a party to the appeal lodged by the DPP. **Two**, he queried as to why the

DPP is yet to lodge the memorandum of appeal while the record of appeal was ready way back in earlier 2016 (20/2/2016). **Third**, he said Rule 69 (2) of the Rules does not apply in the circumstances of this matter.

In rejoinder Mr. Mulisa reiterated his position.

We wish to state at the outset that though there is no specific provision governing adjournment under Part IV of the Rules, the practice always is that where good cause has been shown, the Court may adjourn the appeal. In this case, Mr. Mulisa told the Court that the DPP has filed a notice of appeal which was not countered by Mr. Mkumbe. Since in terms of Rule 68 (1) of the Rules, a notice of appeal institutes an appeal, it is clear then that there is an appeal in this sub- Registry of the Court between the DPP and the three who were set free by the High Court. Surely, the current appellant is not a party to that appeal. But this appeal and that of the DPP stem from one and the same Economic case. Much as Mr. Mkumbe had wished to speed up the matter, under the circumstances of this case, we think it is prudent to consolidate the two, under Rule 69(3) of the Rules and not under Rule 69 (2) as said by Mr. Mulisa so that we maintain consistency in our judgments. In **Masuke Malugu @ Matinyi And Another v. Republic**, Criminal Appeal No. 308

of 2015 (CAT – unreported) this Court was faced with almost a similar problem in that the notice of one of the appellants was defective and it was struck out. The Court did not proceed with the hearing of the appeal of one appellant whose appeal was properly filed but it adjourned the appeal. The Court said as follows;

*"... consolidation of appeals is a guarantee for convenience and consistency. And that, to us, is a safer conduit to the higher interests of justice. Much as one would want the hearing of the first appellant's appeal to be speeded up, and much as speed is an important element in the dispensation of justice, however good the speed may be, justice is still better. So for all the above reasons, we strike out the second appellant's appeal and exhort him to make all the necessary efforts to re lodge a fresh notice of appeal, subject to the law of limitation, so that, his appeal may be reconsolidated with that of the first appellant, so that the appeal is brought back on track, and be disposed of together."*

Applying the *ratio decidendi* of that case, we are satisfied that there is good cause to adjourn this appeal so as to enable the DPP to lodge his memorandum of appeal and the same be consolidated with this appeal.

Order accordingly.

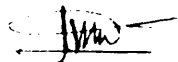
**DATED** at **MBEYA** this 12<sup>th</sup> day of February, 2018.

B. M. LUANDA  
**JUSTICE OF APPEAL**

B. M. MMILLA  
**JUSTICE OF APPEAL**

G. A. M. NDIKA  
**JUSTICE OF APPEAL**

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

  
P. W. BAMPIKYA  
**SENIOR DEPUTY REGISTRAR**  
**COURT OF APPEAL**