

**IN THE COURT OF APPEAL OF TANZANIA**  
**AT DAR ES SALAAM**  
**(CORAM: MBAROUK, J.A., MZIRAY, J.A., And MKUYE, J.A.)**

**CRIMINAL APPEAL NO. 350 OF 2017**

**MAWAZO SIMON NGODELA ----- APPELLANT**

**VERSUS**

**THE REPUBLIC ----- RESPONDENT**

**(Appeal against the decision of the Resident Magistrate  
Court of Singida at Singida)**

**(Lema, PRM. Ext. Juris.)**

**dated the 8<sup>th</sup> December, 2015  
in  
PRM Criminal Appeal No. 16 of 2015**  
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**RULING OF THE COURT**

**9<sup>th</sup> & 14<sup>th</sup> March, 2018**

**MKUYE, J.A.:**

The appellant, Mawazo Simon Ngodela and another (who is not subject to this appeal) were charged with three counts of unnatural offence contrary to section 154 (1) (a) of the Penal Code, Cap. 16 R.E. 2002 in the District Court of Manyoni. The appellant was found guilty and convicted with two counts of unnatural offence and sentenced to thirty years for each count which were ordered to run concurrently. His appeal to the High Court which was placed before PRM with Extended Jurisdiction (W. E. Lema) was

dismissed for being incompetent before the court for the reason that there was no proper memorandum of appeal filed in court.

Realising that he was late to file a notice of appeal to appeal against that decision, the appellant on 9/2/2017 filed an application for extension of time to file it and the said application was granted by the High Court (Mohamed, J.) through an order dated 28/6/2017. The appellant was granted 14 days from the date of the order within which to file the said notice of appeal of which he filed. Since he is still aggrieved by the decision of PRM Extended Jurisdiction, he has now filed to the Court this second appeal on two grounds of appeal.

When the appeal was called on for hearing, the appellant appeared in person and unrepresented; whereas the respondent Republic enjoyed the services of Ms. Lina Magoma learned State Attorney.

At the commencement of the hearing of the appeal the Court wished to satisfy itself on the competency of the appeal. The reason for raising that issue is that we observed from the record of appeal that the High Court had on 28/6/2016 granted the appellant an extension of time of 14 days within which to file a notice of appeal out of time. However, the record shows the

notice of appeal was filed on 7/8/2017. Therefore, we enquired the parties to address us as to whether the notice of appeal was filed within time.

The appellant, being a layperson with no legal knowledge did not have anything to comment and he left the matter to the Court to decide.

On her part, Ms. Magoma submitted that the appellant did not comply with the High Court's order. She contended that, since the High Court on 28/6/2017 extended time of 14 days to file the notice of appeal and he filed it on 7/8/2017, the notice was filed out of time. She said, as the notice of appeal institutes the appeal as per Rule 68(1) of the Tanzania Court of Appeal Rules, 2009 (the Rules) and the notice was filed out of time, then there is no competent appeal before this Court. She therefore, prayed to the Court to strike out the appeal.

The appellant is challenging the decision of PRM Ext. Jurisdiction (W.E. Lema) which was handed down on 8/12/2015. According to Rule 68(1) of the Rules, if he desired to appeal against that decision he ought to have lodged his notice of appeal within 30 days from the date of that decision, that is by 7/1/2016. And it is noteworthy that the notice of appeal in criminal matter institutes the appeal. (See also **January Makanta V. Republic**, Criminal Appeal No. 55 of 2013 (unreported).

Rule 68 (1) of the Rules provides:

*"Any person who desires to appeal to the Court shall give notice in writing, which shall be lodged in triplicate with the Registrar of the High Court of the place where the decision against which it is desired to appeal was given, **within thirty days of the date of that decision and the notice of appeal shall institute the appeal.**"*

[Emphasis added]

In this case, as alluded earlier on, the appellant ought to have lodged his notice of appeal by 7/1/2016. That, however, did not happen. On 9/2/2017 he filed a chamber summons supported by an affidavit seeking extension of time to file the said notice of appeal out of time. On 28/6/2017 the High Court granted the application and extended the time to 14 days within which the appellant can file his notice of appeal. The High Court's order reads:

*"... Prayer is granted. Applicant to file notice within 14 days.*

*Signed  
28/6/2017"*

By that order, it means the appellant was supposed to file his notice of appeal by 12/7/2017. However, the notice of appeal as shown at page 58 of

the record of appeal was lodged on 7/8/2017 which was some 40 days from the date when the time was extended; or 26 days from the date when it was required to be lodged.

In the case of **Hakika Mchilowa & Another V. Republic**, Criminal Appeal No. 208 of 2007, (unreported) where the appellants failed to file their notices of appeal within the period of 14 days prescribed by the law, the Court held that:

*"Rule 61 (1) of the Rules (now Rule 68 (1) of the Rules, 2009) is very clear that the notice of appeal has to be filed within 14 days. The appellants in this appeal have filed their notice of appeal 10 days out of time and no extension of time has been granted. This is contrary to the requirement of Rule 61 (1). That defect renders the appeal incompetent. For being incompetent, we hereby strike out the appeal"*

In this case, though the appellant was granted an extension of time of 14 days within which to file his notice of appeal, he did not file it within the period which was extended in compliance with the order of the High Court of 28/6/2017. This means that by not complying with that order, even the

notice of appeal which was lodged on 7/8/2017 was time barred. It also follows that, since the notice of appeal institutes the appeal and there is no valid notice of appeal, then there is no competent appeal before the Court.

Consequently, as the appeal has no valid notice of appeal which instituted it, we accordingly strike it out for being incompetent.

It is so ordered.

**DATED** at **DODOMA** this 13<sup>th</sup> day of March, 2018.

M.S. MBAROUK  
**JUSTICE OF APPEAL**

R.E.S. MZIRAY  
**JUSTICE OF APPEAL**

R.K. MKUYE  
**JUSTICE OF APPEAL**

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

  
E. F. FUSSI  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**