

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

**(CORAM: MUGASHA, J.A., KITUSI, J.A And MASHAKA, J.A.)**

**CRIMINAL APPEAL NO. 439 OF 2017**

**MATHIAS ABEL ..... APPELLANT**

**VERSUS**

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

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

**(Kibella, J.)**

**dated the 26<sup>th</sup> day of July, 2017**

**in**

**DC Criminal Appeal No. 55 of 2016**

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**JUDGMENT OF THE COURT**

11<sup>th</sup> & 17<sup>th</sup> August, 2021.

**MASHAKA, J.A.:**

On the 15<sup>th</sup> day of November 2006, the District Court of Bariadi of Bariadi District at Bariadi convicted the appellant Mathias Abel in Criminal Case No. 211 of 2006 of armed robbery contrary to section 285 and 286 of the Penal Code [Cap 16 R.E 2002] and sentenced him to 30 years imprisonment with five strokes of the cane. Aggrieved by the decision, the appellant gave notice of his intention to appeal in the said District Court on the 16<sup>th</sup> November, 2006. He later filed an application for extension of time to lodge his appeal out of time, Misc. Application No. 03 of 2015 which was granted to file his appeal out of time. Though his appeal was lodged, the

court dismissed it for being filed out of time, hence time barred. The dismissal of his appeal did not discourage the appellant in his pursuit for his right to be heard, he lodged this current appeal.

At the hearing of the appeal, the appellant appeared in person without legal representation, whereas the respondent Republic was represented by Ms.Wampumbulya Shani, learned State Attorney.

With leave of the Court, the appellant amended the notice of appeal for it to reflect that the appeal is against the order of the High Court which dismissed the appeal for being time barred. The appellant prayed to the Court to adopt the three grounds of appeal which we reproduce as paraphrased hereunder: -

1. That the first appellate court erred in law and fact when it failed to consider the requirement of section 363 of the Criminal Procedure Act, Cap 20 R.E 2002, the appellant has no power to appear in person before the court so as to file; the power is vested to the prison officer in charge as per provision cited above.
2. That the first appellate court erred in law and fact when it failed to consider that the appellant lodged the appeal to officer in charge in

time, he handed over to the officer in charge on the 22<sup>nd</sup> February, 2016 for filing process.

3. That the first appellate court erred in law and fact when it failed to consider the requirements of Rule 75 (3) of the Court of Appeal Rules of 2009.

When Ms. Shani took the floor to reply, she supported the appeal and addressed the Court on whether or not the appeal was lodged out of time and the remedy thereby. Ms. Shani strongly supported the appeal that under section 363 of the Criminal Procedure Act, [Cap 20 R.E 2019] (the CPA) the appellant being an inmate in prison, submits his appeal to the Officer in charge of the Prison. That at page 21 of the record, the Officer in charge of Shinyanga Prison certified the petition of appeal on the 22/02/2016 and presented the same for filing on the 04/04/2016. In terms of section 363 of the CPA, the appeal was not time barred. Yet, if the learned High Court Judge considered the appeal to be time barred, he would have found that the appellant had good cause in terms of section 361(2) of the CPA. Ms. Shani prayed to the Court to quash and set aside the order of dismissal and allow the appellant's appeal to be determined by the High Court. In rejoining, the appellant being a lay person had nothing to add and concurred with the submission of the learned State Attorney.

Initially, on the 19/02/2016, the appellant was granted by the High Court leave to file an appeal out of time not later than 30/03/2016. Subsequently on the 20/02/2016, the appellant prepared his petition of appeal and presented it to the officer in charge of Prison who certified it. However, instead of filing it on or before 30/03/2016, the appeal was filed on the 04/04/2016. Two years later, when the matter came up for hearing, the learned Senior State Attorney informed the court that the appeal had been filed out of time and he prayed for its dismissal. The appellant objected to the dismissal prayer having explained the circumstances surrounding the purported delay to have been caused by the Prison authorities who had the responsibility of forwarding the petition of appeal to the Registrar of the High Court.

However, the learned Hon. Judge, dismissed the appeal for being filed beyond the period stated in the High Court order vide Misc. Application No. 03 of 2015. Being aggrieved with the decision, the appellant opted to file the present appeal.

The question we asked ourselves is whether or not the appeal at the High Court was time barred. Any appeal which originates from the subordinate courts is regulated by the CPA. Section 363 of the CPA,

regulates the mode and place of filing appeals to the High Court for the inmates in the prison, as it stipulates: -

*"Where the appellant is in prison, he may present his petition of appeal and the copies accompanying the same to the officer in charge of the prison, **who shall thereupon forward the petition and copies to the Registrar of the High Court**".*  
(Emphasis added)

The bolded expression imposes a mandatory duty on the prison officer in charge to forward the petition to the court after being presented by the appellant. As we gathered from the record which speaks for itself at pages 20 to 21, the appellant presented his petition to the Officer in Charge of Shinyanga Prison on the 20<sup>th</sup> February, 2016 and the said officer certified the same on the 22<sup>nd</sup> February, 2016. This confirms that the appellant presented his petition well ahead of time, had discharged his responsibility considering that the appellant is serving his sentence in prison and had no other mechanism to lodge his petition other than presenting it to the prison authorities as provided by the law. We are fortified in that regard because section 363 of the CPA is intended to provide the effective mechanism for an appellant in prison to prepare his petition and to be lodged at the respective High Court registry. This, we emphasized in the case **Bundala**

**s/o Abdallah @Juma and Ntinginya s/o Masanja, v. the Republic,**

Criminal Appeals No. 429 & 430 of 2016 (unreported) that: -

*"While it is the duty of the intending appellant who is in prison custody to hand in the respective ..... petition of appeal to the prison officer in charge, it is equally the duty of the responsible prison officer to ensure that the requisite documents are transmitted to the respective court".*

The appellant cannot be faulted for the delay if any. In view of the stated position of the law as emphasized in case law, we are satisfied that the learned High Court Judge dismissed (DC) Criminal Appeal No. 55 of 2016 without considering the provisions of section 363 of the CPA. Besides, even if he believed that the appeal was time barred which was not the case, still he could have invoked section 361(2) of the CPA and find that the appellant had demonstrated good cause for not lodging his appeal within the time specified in the order. On what transpired before the High Court, we reiterate what we observed in the case of **Bundala s/o Abdallah @Juma and Ntinginya s/o Masanja, v. the Republic** (supra), *"we urged those entrusted with the noble task of dispensing justice to adhere always to this simple but salutary principle; in administration of justice, speed is good, but justice is better."*

In the premises, the appeal was within time and it was, with respect, wrongly dismissed by the High Court. After our deliberations, we find that grounds one and two of the appeal sufficiently suffice to dispose of this appeal. Thus, the appeal is merited.

Consequently, we allow this appeal, quash the order of dismissal and restore the appeal in (DC) Criminal Appeal No. 55 of 2016. We accordingly direct the High Court to determine the appeal expeditiously as possible.

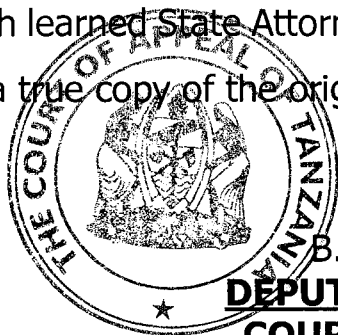
**DATED** at **SHINYANGA** this 16<sup>th</sup> day of August, 2021.


S. E. A. MUGASHA  
**JUSTICE OF APPEAL**

I. P. KITUSI  
**JUSTICE OF APPEAL**

L. L. MASHAKA  
**JUSTICE OF APPEAL**

This Judgment delivered this 17<sup>th</sup> day of August, 2021 in the presence of Appellant in person, and Mr. Jukael Reuben Jairo assisted by Mr. Nestory Mwenda both learned State Attorney for the Respondent/Republic, is hereby certified as a true copy of the original.



  
B. A. MPEPO  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**