

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF
TANZANIA
(MUSOMA DISTRICT REGISTRY)
AT MUSOMA**

CRIMINAL APPEAL NO. 35 OF 2020

*(Originating from the decision of the District Court of Serengeti District at Mugumu
in Economic Case No. 48 of 2018)*

**ELIAS S/O MAKULA @MADUHUAPPELLANT
VERSUS
THE REPUBLICRESPONDENT**

RULING

6th and 6th May, 2020

KISANYA, J.:

In the District Court of Serengeti at Mugumu, the appellant, Elias Makula @ Maduhu together with Kisioni Joseph @ Masanja and Mwitwa Monai @ Wana were convicted of three offences namely, Unlawful Entry in National Parks, Unlawful Possession of Weapons in the National Park and Unlawful Possession of Government Trophies contrary to the relevant laws of Tanzania. Consequently, they were sentenced to one year imprisonment for the first and second counts; and twenty years imprisonment for the third count.

Aggrieved by the conviction and sentence, the appellant has filed an appeal before this Court.

When the appeal was placed before me for hearing, the appellant appeared in person while the respondent was represented by Mr. Nimrod Byamungu, learned State Attorney.

From the very outset, the Court noted that, the notice of appeal appended to the appeal was filed two months after the date of judgement, conviction and sentence. Therefore, parties were invited to address on the competence of the appeal.

In his submission, the appellant conceded that, the judgement was delivered on 17/7/2019 and that, the notice of intention to appeal was filed on 21/10/2019. However, he stated that he was not aware of the time within which the notice of intention to appeal ought to have been lodged. He therefore urged the Court to help him.

In response, Mr. Byamungu argued that the appeal is incompetent before the Court because the accompanied notice of intention to appeal was filed out of ten (10) days prescribed under section 361(1) (a) of the Criminal Procedure Act, Cap. 20, R.E. 2002. For that reason, Counsel Byamungu advised me to struck out the appeal.

As stated herein, the issue for consideration is whether the appeal is competent before the Court. The procedure for instituting an appeal against the decision of District Courts as in the matter is governed by section 361 of the Criminal Procedure Act [Cap. 20, R.E. 2002]. For an appeal to stand, the appellant is required file notice of his intention to appeal within 10 days from the date of conviction, sentence or order. However, this Court has powers to extend time for filing notice of appeal out of time if there is good cause. The said provision reads 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.”

In the instant appeal, a copy of judgement attached to the petition of appeal shows that, the conviction and sentence which are the basis of this appeal were passed or delivered on **17th July, 2019**. Therefore, guided by the above cited provision, the appellant was required to file his notice of intention to appeal on or before **28th July, 2019**. However, it is on record that the notice of intention to appeal was filed on **21st October, 2019**.

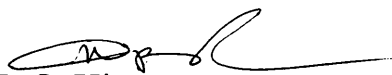
From the foregoing, it is quite clear and I agree with Mr. Byamungu that, the notice of intention of appeal was filed out of time specified by the law. This Court cannot entertain or determine an appeal which is accompanied by the notice of intention to appeal filed out of time unless leave to file notice of intention to appeal out of time is sought and granted.

In view of the above, I hold that this appeal is incompetent before this Court as the notice of intention to appeal is time barred. I accordingly

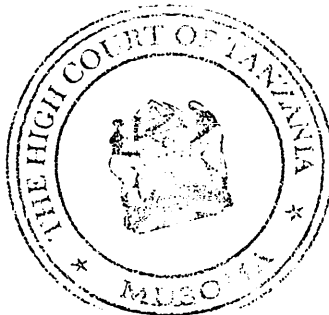
struck out this appeal for being incompetent. The appellant is hereby advised to apply for leave to file the notice intention to appeal and petition of appeal out of time.

It is so ordered.

Dated at MUSOMA this 6th day of May, 2020.


E. S. Kisanya
JUDGE
6/05/2020

Court: Ruling is delivered through video conference this 6th day of May, 2020, in the presence of the appellant and Mr. Nimrod Byamungu, learned State Attorney for the Republic/Respondent.




E. S. Kisanya
JUDGE
6/05/2020