

**IN THE HIGH COURT OF TANZANIA**

**AT MTWARA**

**CRIMINAL APPEAL NO. 86 OF 2019**

(Original Kilwa District Court Criminal Case No. 100 of 2018)

**AUGUSTINO JAMES BANGA.....APPELLANT**

**VERSUS**

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

10 & 17 June, 2020

**RULING**

**DYANSOBERA, J.:**

In this appeal the appellant Augustino James Banga is seeking to impugn the decision of the District Court of Kilwa in Criminal Case No. 100 of 2018 in which the appellant was convicted of cattle theft c/ss 258 (1) and 268 (1) and (2) of the Penal Code, Cap 16 R.E 2002 and sentenced to five (5) years term of imprisonment.

In his petition of appeal filed in court on 9<sup>th</sup> day of October, 2019 the appellant is armed with seven (7) grounds of appeal.

On 10<sup>th</sup> June 2020 when the appeal was called on for hearing, Mr. Paul Kimweri, learned Senior State Attorney informed the court that the appeal before the court is incompetent and the court lacks jurisdiction to entertain it. He submitted that since this is a legal issue which touches on the jurisdiction of the court, it can be raised anytime.

Learned Senior State Attorney explained that this appeal is incompetent as the notice of appeal was filed outside the prescribed period of time of ten days. He elaborated that the impugned judgment of the District Court was delivered by G. P. Ngaeje on 29.4.2019 at Kilwa District Court but it is not until on 19.5.2019 when the notice of appeal was received by both the Kilwa District and the High Courts.

Mr. Paul Kimweri contended that a follow up has revealed that the 30<sup>th</sup> was the last date of the month of April and, therefore, counting from 29.4.2019 when the trial court's judgment was given to 10.5.2019 when the notice of appeal was filed, it makes a total of 12 days which is outside of the prescribed limitation period. He urged this court to find the notice of appeal which was filed out of time rendered the appeal incompetent and the appeal is liable to be struck out.

The appellant, in, reply, told this court that the notice of appeal was prepared on 29.4.2019 and handed over to Kilwa Prison Authority. He argued that if at all the Kilwa prison authority were late to file it in court he cannot be denied of his rights of appeal as he complied with the law and is not to blame.

I have considered the concern raised by Mr. Paul Kimweri, learned State Attorney that since the notice of appeal was filed beyond the prescribed period of ten days, this appeal filed by the appellant is incompetent and this court would lack jurisdiction to entertain it as time limitation is fundamental and touches the jurisdiction of the court.

I have also taken into account the appellant's argument that he prepared the notice of appeal in time that is on 29.4.2019 and thereafter handed it over to the prison authority at Kilwa. It is his contention that since he complied with the law, any delay by prison authority, he has not to blame and cannot be denied of his right of appeal being heard.

I have noted with great concern the competing arguments. It is time that the appellant's right to have his appeal heard and determined is fundamental as that right is not only legal but also constitutional.

It is, however, true that the appellants right is circumscribed by the law section 361 (1) (a) and (b) of the Criminal Procedure Act, in particulars.

There is no dispute that the impugned notice of appeal was prepared and signed by the appellant on 30<sup>th</sup> April, 2019 only a day after the incarceration.

The appellant's notice of appeal further indicates that the date on which the trial court received a copy of the Notice of Appeal was 9<sup>th</sup> May 2019 and the said notice of Appeal was lodged in this court on 10<sup>th</sup> May, 2019.

There is no doubt that the appellant was in prison with no freedom to move out of the prison and file the document.

It is equally not in doubt that the appellant had no ability to force the prison officer in charge of Kilwa Prison to dispatch the notice of appeal in time.

There are the setbacks which were beyond the appellant's control. I find these factors to be good cause not only for the delay but also warranting an extension of time.


Accordingly, the appeal is struck out for being incompetent due to the notice of appeal having been filed outside the prescribed time of ten days.

Invoking the provisions of sub – section (2) of the Criminal Procedure Act, I extend time within which the appellant to file both notice of intention of appeal and a petition of appeal.

The appellant should file his notice of intention of appeal within ten (10) days from today and should also file a petition of appeal within forty five (45) days from today.

Order accordingly.

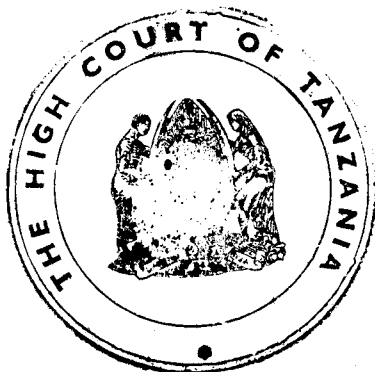



  
W.P. Dyansobera

JUDGE

17.6.2020

Dated and delivered at Mtwara this 17<sup>th</sup> day of June, 2020 in the presence of the appellant and Mr. Paul Kimweri, learned Senior State Attorney representing the respondent.



  
W.P. Dyansobera

JUDGE