

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

CRIMINAL APPEAL No. 161 OF 2019
NYAITATI MAINDE MOSAMA @ MASIAGA CHACHA... APPELLANT

VERSUS

REPUBLIC RESPONDENT

(Originating from Criminal Case No 18/2016 of the District Court of Musoma at Musoma)

RULING

30th June, & 3RD July, 2020

Kahyoza, J.

Nyaitati Mainde Mosama @ Masiaga Chacha (the appellant) and **Samson Chacha Mwita Pius @Kipepeo** were arraigned for armed robbery c/s 287A of the Penal Code [Cap.16 R.E. 2002]. They denied the accusation, whereupon the prosecution summoned ten witnesses and tendered six documentary exhibits to support its claim.

The district court found **Nyaitati Mainde Mosama @ Masiaga Chacha** and **Samson Chacha Mwita Pius @Kipepeo** guilty and convicted them of the offence of armed robbery in both counts, they stood charged and sentenced them to thirty years imprisonment.

Aggrieved, **Samson Chacha Mwita Pius @Kipepeo** lodged a notice of appeal, which is in the trial court record. **Nyaitati Mainde Mosama @ Masiaga Chacha** alleged that he too lodged a notice of appeal although I could not find it in the trial court's record.

After receiving a notice of appeal, the trial court supplied a copy of the judgment to the Prison's officers of Musoma on the **18th May, 2017**. **Samson Chacha Mwita Pius @Kipepeo** filed his appeal on the 13th June, 2017. **Nyaitati Mainde Mosarna @ Masiaga Chacha**, the appellant did not lodge his appeal until 5th November, 2019. The appellant's appeal could not be heard on time because the trial Court's record was not available. The trial court's record was with the High Court of Tanzania Mwanza District Registry processing **Samson Chacha Mwita Pius @Kipepeo's** appeal to the Court of Appeal.

Eventually, we obtained a copy of the proceedings and all exhibits and set the appeal for hearing. On the day fixed for hearing of the appeal, Mr. Temba, learned state attorney for the Republic, the respondent raised a preliminary point of objection that the appeal was out of time. Mr. Temba, submitted that the appellant was convicted together with another person. He added that the appellant and another person lodged a notice of appeal. The appellant's notice of appeal referred to a resident magistrate other than the trial resident magistrate. It mentioned the trial magistrate as K.T Mushi SRM instead of J.S. Musaroche. He refuted the applicant's allegation that he obtained a copy of the judgment on the 20/10/2019 well after the High Court- Mwanza District Registry decided the appeal of **Samson Chacha Mwita Pius @Kipepeo**, the appellant's co-accused person.

The state attorney concluded that if the appellant had any ground for not lodging the appeal on time he was required to apply for extension of time to lodge an appeal.

The appellant replied that it was not true that his appeal is out of time. He contended that he received a copy of the judgment on the date indicated by the prison's officer. He stated that after the court convicted him, the prison's officer transferred him to Butimba and later to Moro prison in Sumbawanga. He stated that he returned to Musoma after he went on hunger strike. He contended that he was brought to Musoma on the 19/8/2019.

Mr. Temba contended that it was not true that the prison officers got a copy of the judgment on the 20/10/2019. A copy of the judgment was sent to the prison officers in 2017 that why the appellant's co-accused person managed to file his appeal in 2017. He added that the appellant's submission should have supported his application for extension of time to appeal.

I considered the preliminary objection, upheld it, and struck out the appeal on the 1st July, 2020 reserving reasons. I now, provide the reasons for upholding the preliminary objection. Appeals from the district courts or courts of resident magistrates to this Court is governed by section 361 among other sections of the Criminal Procedure Act, [Cap. 20 R.E 2019], (the CPA). The provisions of section 361 lays down condition for appeal. The conditions are, **one**, the convict is required to file a notice of appeal with ten days; and **two**, he must lodge his petition of appeal within 45 days from the day of the judgment. The law excludes the time within which to apply and obtain a copy of the ruling. It states that-

"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."

The appellant was convicted together with **Samson Chacha Mwita Pius @Kipepeo**. **Samson Chacha Mwita Pius @Kipepeo** got a copy of the judgment on the 18th May, 2017. Musoma prisons certified that they got a copy of the judgment on the 18th May, 2017. I find it proved beyond all reasonable doubt the prison officers got a copy of the on the 18th May, 2017 and not the 20th October, 2019 as the appellant wants us to believe. It is self-evident that if the prison's officers had not received a copy of the judgment, **Samson Chacha Mwita Pius @Kipepeo**, the appellant's co-accused person would not have processed his appeal.

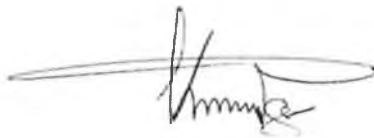
The prison officers ought to have advised the appellant to lodge an application for extension of time instead of fabricating facts that they received a copy of the judgment on the 20th October, 2019. It was submitted by the state attorney that the appellant lodged a notice of appeal referring to a magistrate who did not convict him. I suspect that the appellant did not lodge a notice of appeal regarding the case under consideration which was tried by J.S. Musaroche. Instead the appellant is trying to be smart to use the notice he filed in regard to the case tried by

K.T. Mushi, where he was also charged with the offence of armed robbery, convicted and sentenced to thirty years imprisonment.

Having formed an opinion that the appellant's appeal was lodged out of time, I will not consider the issue whether or not the appellant lodged a notice of appeal.

In the final analysis, I uphold the preliminary objection and strike out the appeal. The appellant may re-institute the appeal after applying and obtaining leave to file his appeal out of time.

I order accordingly.



J. R. Kahyoza

JUDGE

3/7/2020

Court: Reasons for the decision delivered in the absence of the parties.
Copies to be supplied to the parties. B/C Ms. Tenga present.



J. R. Kahyoza, J.

3/7/2020