

THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

AT MBEYA

CRIMINAL APPEAL NO. 24 OF 2020

(Originated from Criminal Case No. 177 of 2018 in the Resident Magistrate's Court of Mbeya at Mbeya)

HURUMA ALON @ BABA FADHILI.....APPELLANT

VERSUS

THE REPUBLIC.....RESPONDENT

RULING

24 & 24.03.2020


UTAMWA, J:

The court prompted the parties to address it on whether or not the appeal was timely filed in court. M/S. Xaveria Makombe learned State Attorney for the respondent/Republic submitted that, the appeal was out of the time prescribed by the law, i.e forty five days from the date of impugned judgment as per section 361 (1)(b) of the Criminal Procedure Act Cap. 20 R:E 2002 (the CPA). She further argued that, the impugned judgment was delivered on 23/9/2019 whereas the appeal was filed on 17/1/2019. The appellant had never applied ^{for} and obtained extension of time before filing the appeal as required by law.

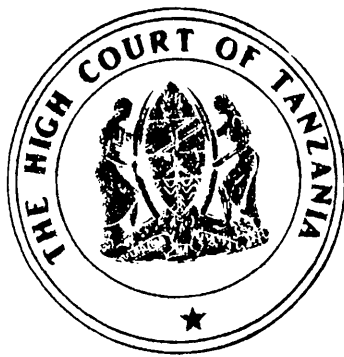
On his part, the appellant argued that, he received the copy of judgment belatedly i.e. in January 2020, hence he prayed for the appeal to be heard since it was not his fault.

On my part, I totally agree with the submissions of the learned State Attorney. The appeal is incompetent for violating the mandatory provisions of section 361 (1) (b) of the CPA. The reasons advanced by the appellant would hold water in an application for extension of time.

I therefore, strike out the appeal. The appellant is advised thus, if he still wishes, he should follow the law by firstly applying for and obtaining the extension of time to file the appeal out of time. I underscored this stance of the law in my various previous decisions including in **Paschal s/o Apolinary v. Republic, Criminal Appeal No.148 of 2015, High Court of Tanzania, at Tabora (unreported)**. In fact, the appellant is also duty bound to seek and obtain extension of time to file the notice of appeal out of the time prescribed by the law (ten days from the date of the impugned judgment), which said time is prescribed under section 361 (1) (a) of the CPA. This follows the fact that, the notice of appeal that was previously given by the appellant for this appeal becomes inoperative owing to the fact that this appeal has been struck out. In law, once an appeal of this nature is struck out, its notice of appeal also follows suit. It is so ordered.


J.H.K. Utamwa
JUDGE
24/03/2020

COURT: Ruling delivered in the presence of the parties in court, this 24th March 2020.



J.H.K. Utamwa

JUDGE

24/03/2020