

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(BUKOB A DISTRICT REGISTRY)**

AT BUKOB A

CONSOLIDATED CRIMINAL APPEAL No. 49 & 50 OF 2020

(Arising from the Resident Magistrates' Court of Bukoba at Bukoba in Criminal Case No. 234 of 2016)

ERICK MATHIAS & ANOTHER ----- APPLICANTS

Versus

THE REPUBLIC ----- RESPONDENT

RULING

18/11/2020 & 18/11/2020

Mtulya, J.:

On 26th June 2020, Mr. Erick Mathias and Geoffrey Richard (the appellants) preferred an appeal before this court to contest decision of the **Resident Magistrates' Court of Bukoba at Bukoba** in **Criminal Case No. 234 of 2016** which sentenced the appellants to thirty (30) years imprisonment with twelve (12) strokes of cane. The dual were prosecuted and found guilty of armed robbery contrary to section 287A of the **Penal Code** [Cap. 16 R. E. 2016] (the Code).

The appeal was registered out of statutory time limit following enlargement of fourteen (14) days leave granted by this court to file an appeal out of statutory time in **Misc. Criminal Application No. 59 of 2019**. However, when the appeal was scheduled for hearing

on 18th November 2020, Mr. Juma Mahona, learned State Attorney spotted a defect with regard to the notice of intention to appeal in the court's order of in **Misc. Criminal Application No. 59 & 60 of 2019**.

According to Mr. Mahona an appeal registered in this court must comply with requirement of the law in section 361 (1) (a) of the **Criminal Procedure Act** [Cap. 20 R. E. 2019] (the Act) and precedent of the Court of Appeal in **Matheo Paulo & Another v. Republic, Criminal Appeal No. 398 & 400 of 2016** which stated that a notice of intention to appeal is important before an appeal is registered in courts.

With the order in **Misc. Criminal Application No. 59 & 60 of 2019** and this appeal, Mr. Mahona argued that the present appeal is incompetent as the order required the appellants to file an appeal only without leave of filing a notice of intention to appeal. Finally, Mr. Mahona advised the appellants to file another application for enlargement of time containing two *omnibus* prayers of filing notice of intention to appeal and petition of appeal in this court to set their record of appeal straight.

The Appellants on their part, have partly conceded the submission of Mr. Mahona, but claimed to have attached the notice of intention to appeal in the present appeal according to the law in section 361 (1) (a) of the Act. The appellants submitted further that even if this court finds this appeal incompetent, they may be given priorities in determination of a fresh application on enlargement of time as they have been in this court's corridors for long time searching for substantive justice.

On my part, I have perused the record of this appeal, it is unfortunate that in the Petitions of Appeal registered by the appellants do not display in title the decision in **Misc. Criminal Application No. 59 & 60 of 2019**, which granted them enlargement of fourteen (14) days leave to file an appeal in this court. Following that defect, the case file of the decision in **Misc. Criminal Application No. 59 & 60 of 2019**, was not attached in this appeal to form part of the proceedings of this appeal.

I think, in my opinion, all those decisions determined to the finality and related to this appeal were supposed to be clearly stated in the title of the Petitions of Appeal, even if they are ten (1) of

them. The files in some cases do assist judges in understanding origin of disputes and related proceedings. However, the appellants have registered in their Petitions of Appeal copies of the decision in **Misc. Criminal Application No. 59 & 60 of 2019**, and notices of intention to appeal in this court as per requirement of the law in section 316 (1) (a) of the Act.

To the appellants, this was a correct step to move this court in hearing and determining the present appeal, but Mr. Mahona argued that the prayer registered in **Misc. Criminal Application No. 59 & 60 of 2019**, and order emanated from the prayers granted the right of appeal without any orders as to the filing of notice of intention to appeal out of time. To my opinion, the law regulating appeals to this court from subordinates courts is enacted in section 361 (1) (a) of the Act. For purposes of appreciation of the law, I will quote:

...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.

It is fortunate that the enactment has already received interpretation from our superior in the precedent of **Matheo Paulo & Another v. Republic** (supra). At page 11 of the decision, the Court stated that:

As was rightly stated by the learned Judge the appellants were, in terms of section 361(1) (a) of the Criminal Procedure Act Cap. 20 R.E 2002, required to give notice of intention to appeal within ten days from the date of finding, sentence or order and also, in terms of section 361 (1) (b) of the CPA, to file an

appeal within forty five days from the date they are served with proceedings, judgment of order sought ...preparation and filing of a notice of appeal requires no document from the court.

As there is enactment in section 361 (1) of the Act, which has the benefit of interpretation from our superior court, and considering the appellants have not cited in their title to the Petitions of Appeal the decision in **Misc. Criminal Application No. 59 & 60 of 2019**, and considering the two defects render this appeal incompetent, this court has no options rather than to strike out of the record this appeal, as I hereby do. This appeal, therefore, is struck out for want of competence.

I understand the appellants, during the hearing of the objection, complained of delay in accessing this court to have their substantive rights determined. However, this is a court of justice for both parties in dispute. As there are legal issues to be determined before hearing, they must be treated as such for want of proper record of this court. To my opinion, I think, the appellants may, if they so wish, prefer fresh *omnibus* application for enlargement of

time and pray for filing of: first, notice of intention to appeal and second, petition of appeal out of statutory time, and initiate them according to the law in section 361 (1) & (b) of the Act.

Ordered accordingly.





F.H. Mtulya

Judge

18.11.2020

This Ruling was delivered in chambers under the seal of this court in the presence of learned State Attorney, Mr. Juma Mahona and in the presence of the Appellants Mr. Derick Mathias and Mr. Geoffrey Richard.




F.H. Mtulya

Judge

18.11.2020