

IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA

MOSHI DISTRICT REGISTRY

AT MOSHI

CRIMINAL APPEAL NO. 77 OF 2019,

(C/f Criminal Case No. 99 of 2005 District Court of Same at Same)

JUMA HUSSEIN APPELLANT

Versus

THE REPUBLIC.....RESPONDENT

14th July, 2020 & 17th July, 2020

RULING

MKAPA, J:

This Ruling emanates from Criminal Case No. 99 of 2005 at Same District Court at Moshi in which the appellant was charged with and convicted of the offence of Rape c/s 130 (1) (2) (e) and 131 of the Penal Code Cap 16 [R.E. 2002]. The appellant denied to have committed the offence. After a full trial, he was found guilty, convicted and sentenced to life imprisonment.

The appellant was aggrieved by the decision, but did not appeal in time. On 06th January 2014, vide Misc. CR Application No. 1 of 2014 he lodged an application for extension of time so that he could file his appeal out of time and the same was granted by this court (**A.N.M Sumari, J.**) on 2nd November 2015. The appellant was



ordered to lodge the appeal within 14 days. However, this appeal was lodged in this court on 31st October 2019 and it was ordered to be heard by way of written submissions. After the appellant had filed his submission in chief, the respondent replied and raised a preliminary objection to the effect that the appeal is hopelessly time barred and the same should be dismissed.

Arguing in support of the preliminary objection the respondent briefly explained the fact that the appeal is time barred by four years. In reply the appellant conceded but he blamed this court and the prison staff to the effect that, way back in 2015 he did lodge the appeal but all the records were lost. In other words the appeal was filed when the case file records were found. He finally prayed for leniency.

Having considered submissions by both parties the question is whether the appeal is time barred. It is on record at page 8 of the typed proceedings, this court on 2/11/2015 did order for the appeal to be filed within 30 days from the date of the order as follows:-

Order; Application granted as prayed. Applicant to file his appeal within 30 days from today

Sgd A.N.M Sumari, J

2/11/2015"

From the above order, the appeal ought to have been filed by 2nd December 2015 instead, the appellant filed the same four years later.

As this court has no mandate to entertain an appeal filed out of time, the appellant's failure to comply with the time limit renders this appeal time barred hence incompetent. Consequently, I struck out the appeal. The appellant if he so wishes, may apply for another extension of time to appeal out of time prior to filing another appeal.

It is so ordered.

Dated and Delivered at Moshi this 17th day of July, 2020.




S.B. MKAPA
JUDGE
17/07/2020