

**THE UNITED REPUBLIC OF TANZANIA**

**JUDICIARY**

**IN THE HIGH COURT OF TANZANIA**

**MBEYA DISTRICT REGISTRY**

**AT MBEYA**

**CRIMINAL APPEAL NO. 33 OF 2019**

**(Originating from the District Court of Rungwe District, at Tukuyu in Criminal Case No. 100 of 2017).**

**NSAJIGWA WILFRED MWAKILASA.....APPELLANT**

**VERSUS**

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

**RULING**

**16 & 16.03.2021**

**UTAMWA, J:**

In this appeal, the appellant, NSAJIGWA WILFRED MWAKILASA challenged the conviction and sentence of the District Court of Rungwe district, at Tukuyu in Criminal Case No. 100 of 2017. He preferred 12 grounds of appeal. The respondent objected the appeal.

When the appeal came before me for hearing, the appellant appeared in person and Ms. Sarah Anesius, learned State Attorney appeared for the respondent/Republic. Before the hearing took off, I noted that, the appellant had previously been granted extension of time by this court (Mambi, J.) on 03/12/2019. He was directed to file a notice of intention to appeal and an actual appeal within 21 days from the date of the order. However, the petition of the appeal at hand was filed before this

court on 21/2/2020 which was out of the time set by this court. I prompted the parties to address the court on the issue of why the appeal should not be struck out for being filed out of time.

The appellant submitted in short that, he gave the notice of appeal in time, but he thought the prison authority delayed to file the appeal in court. On the other side, the learned State Attorney for the respondent argued that, the appeal was filed out of time. She also argued that, if the appellant still wishes he may re-apply for extension of time. In his rejoinder submissions, the appellant just prayed for the mercy of the court.

Considering the facts narrated above, there is only one issue to be determined, i.e. *whether or not the appeal was timely filed*. In my view, the circumstances of the case call for a negative answer. This is because; by simple arithmetic the said 21 days given by this court expired on 24/12/2019. The filing of the petition of appeal on 21/2/2020 was thus, out of the time prescribed by this court.

In fact, at the bottom of the petition of appeal it is indicated that, the appellant signed it on 26/12/2019. It follows thus that, even if this court considers this date as the reckoning date, the appeal will still be late for two days.

The law guides that, a delay is a delay whether it is of a single day or of several years; see the decisions by the Court of Appeal of Tanzania (CAT) in the case of **National Bank of Commerce Ltd v. Partners Construction Company Ltd, CAT Civil Appeal No. 34 of 2003** (unreported) and **Hemedi Ramadhani and 15 others v. Tanzania Harbour Authority, Civil Appeal No. 63 of 2001, CAT at Dar as**

**Salaam** (unreported). In this lastly mentioned precedent, it was specifically held that, even a one-day delay to file a document in court renders a matter incompetent. The prayer for the court's mercy by the appellant is thus, not tenable. This is because, the court does not have powers to act against its un-reversed order.

Owing to the above reasons, I answer the issue framed above negatively that, the appeal at hand was filed out of time. I therefore, strike it out. The appellant is advised thus, if he still wishes, he can re-apply for extension of time if he has sufficient reasons for his delay. It is so ordered.



J.H.K. Utamwa

Judge

16/03/2021.

**Court:** Ruling delivered in the presence of the applicant (by Virtual Court link while in Ruanda Prison-Mbeya) and Ms. Sarah Anesius, learned State Attorney for the respondent, in court this 16<sup>th</sup> March, 2021.

JHK UTAMWA

JUDGE

16/03/2021