

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

AT MUSOMA

CONSOLIDATED CRIMINAL APPEALS NO. 23 AND 24 OF 2021

- 1. MNANKA S/O SARI @ MATIKO @ BISARE 1ST APPELLANT**
- 2. SARYA S/O SARYA @ MATIKO 2ND APPELLANT**

VERSUS

REPUBLIC RESPONDENT
***(Appeal from the decision of the District Court of Serengeti
at Mugumu in Economic Case No. 144 of 2019)***

RULING

11th and 11th May, 2021

KISANYA, J.:

This appeal stems from the decision of the District Court of Serengeti in Economic Case No. 144 of 2019 that was delivered on 26th November, 2020. In terms of that decision, the appellants were convicted for offences of unlawful entry into the game reserve, unlawful possession of weapon in the game reserve and unlawful possession of government trophies and sentenced to imprisonment for the term of 1, 2 and 20 years respectively.

When the appeal came up for hearing today, the appellants appeared in person. The hearing proceeded in the absence of the respondent who defaulted to appear.

Before hearing the appeal on merit, I implored the appellants to address the Court whether their respective notices of intention to appeal were filed within

ten days prescribed by section 361(1)(a) of the Criminal Procedure Act [Cap. 20, R.E. 2019].

This being a legal issue it was not addressed as such by both appellants. They just asked me to hear and determine the appeal on merit. The first appellant went on to contend that it was not their fault that their notices of intention to appeal were lodged out of time.

At this juncture, I required to determine whether the notice of intention to appeal by each appellant was filed in time. The time within which to lodge the notice of intention to appeal is provided for under section 361 (1) (a) of the Criminal Procedure Act (supra) which reads:

"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,

Reading from the above cited provisions, it is clear the notice of intention to appeal is required to be lodged within ten days from the date of the decision subject to the appeal. The notice of intention to appeal filed out of time is good as no notice of appeal lodged in the court. Unless the appellant gives the notice of intention to appeal, his appeal cannot be entertained by this Court. This

stance is deduced from the case of **Jackson Zebdayo @ Wambura and Another vs R**, Criminal Appeal No. 419 of 2018 (unreported) when the Court Appeal held as on follows after reproducing section 361(1)(a) of the CPA:

"The above quoted provision uses the word 'shall' meaning that it is mandatory for the appellant to give notice of intention to appeal for his appeal to be entertained by the High Court."

In view of the above position of law, the time within which to lodge the notice of intention to appeal lapsed 6th December, 2020. However, it is on record that the notice of intention to appeal by each appellant was filed on 11th December, 2020. Thus, they delayed for almost 5 days. It is trite law that each day of delay must be accounted for.

All said and done, I find the appeal incompetent for want of valid notice of intention to appeal. I accordingly strike out the appeal for the above stated reason. The appellants are advised to apply for extension of time within which to lodge the notice of intention to appeal. It is so ordered.


DATED at MUSOMA this 11 day of May, 2021.




E. S. Kisanya
JUDGE

COURT: Ruling delivered this 11th day of May, 2021, in the presence of both appellants and in the absence of the respondent.




E. S. Kisanya
JUDGE
11/05/2021