

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF MUSOMA

AT MUSOMA

CRIMINAL APPEAL NO 150 OF 2020

CONSTANTIN BUSIGA PELEKA..... 1ST APPELLANT

SWEDI AMRANI MLETE2ND APPELLANT

VERSUS

THE REPUBLICRESPONDENT

(Originating from Economic Case No. 317/2018 of the Serengeti District Court at Mugumu)

RULING

24th May & 15th June, 2021

Kahyoza, J:

Constantine Busiga Peleka and **Swedi Amani Mlete** were convicted with five counts and ordered to serve a custodial sentence of five years in each count. The trial court ordered the sentence to run concurrently. Aggrieved by both the conviction and sentence, Constantine and Swedi appealed to this Court.

Before the Court heard the appeal, the respondents State Attorney raised preliminary point of law that the appeal was lodged out of time. He submitted that the appellants were given a copy of the judgment on the 6/7/2020 and the lodged the appeal on the 30/9/2020. He cited section 361(1) of the Criminal Procedure Act, [Cap. 20 RE 2019] which provides that the aggrieved person must appeal within 45 days. He also cited the case of **Yosan Nkanghure and Another V. R.** [1984] TLR 89, where the Court decided that the right to appeal cannot be an open handed.

Mr. Chuwa, the respondent's State Attorney, prayed the appeal to be dismissed.

The appellants had an opportunity to reply to the preliminary objection. The first appellant prayed his appeal to be heard. The second appellant submitted that the appeal was filed immediately after they obtained a copy of the judgment.

It is trite law that parties to suits or criminal proceedings must comply with time schedules provided in the law or else there would be no meaning having such limitation period in the law books. See Privy Council's

case of **Ratman Cumarasamy** (1965) I WLR 9 – p9 where it was held that the **Rules of Court must, *prima facie* be obeyed**, and, in order to justify a court in extending the time during which some step-in procedure requires to be taken there must be some material on which the Court can exercise its discretion. A need to comply with time limit provided in the law was emphasized in the case cited to this of **Yoram Nkanghule and Another V. R.** (Supra) where this court stipulated that any period of limitation has its purpose, the most obvious being **to avoid chaos in the business of the courts.**

The Criminal Procedure Act, under S. 361 (1) provides that a person aggrieved by the finding or sentence or order of the District Court or Resident Magistrate's Court has to lodge his appeal within 45 days excluding time required to obtain a copy of the proceedings, judgment or order appealed against.

The record shows that the trial court delivered its judgment on the 19/6/2020 and certified it on 6/7/2020. Regarding the proceedings, the trial court certified the proceedings on the 30/3/2021. It is therefore,

beyond disputed that a copy of the judgment was ready to be supplied to the appellants from 6/7/2020 and the proceedings were ready to be supplied from 30/3/2021. The appellants lodged the appeal before they were supplied a copy of the proceedings. For that reason, in determining whether the appeal was filed within time I will exclude time within which they required to obtain a copy of the judgement.

I examined the record to find out if the date the trial court supplied the appellants with a copy of the judgment in vain. I could not find any evidence. The appellant's memorandum of appeal did not indicate when the appellants obtained a copy. The appellants provided only the date of their conviction in the memorandum of appeal. Also, they did not indicate the date of lodging a notice of appeal. In deed I examined the records and failed to I find a notice of appeal. The notice of appeal was attached to the memorandum of appeal. It does not bear the trial's stamp. It came into my mind that the appellants did not avoid to provide the date of lodging a notice of appeal and the date of receiving the copy of the judgment without a reason. They alive of the fact that to provide such information would amount to self-incrimination.

The appellants filed their appeal on the 30/9/2020 which implies that they got a copy of the ruling on or after 14/8/2020, which is forty five days from the date they filed the appeal. As pointed out above the appellants did not disclose when they obtained a copy of the judgment. I do not find it proper to assume that it took 37 days from the date it was certified i.e. on 6/7/2020 to 14/8/2020 when it is presumed the appellants got a copy of the judgment.

The appellants had a duty to declare the date when they obtain a copy for the purposes of establishing that they lodged the appeal within time. In the absence of the declaration with or without evidence of the date they (appellants) obtained a copy of the judgment, it is my considered view that a copy of the judgment was served upon the appellants within a reasonable time that is two weeks, calculated from the date a copy of the ruling was certified. I will therefore, compute time within which to appeal from 21/7/2021 when two weeks expired. Thus, 45 days from 21/7/2021 expired on the 3/9/2020. The appellants lodge their appeal on the 30/9/2020. The appeal was that reason, lodged after time within which to appeal had lapsed.

In the end, I uphold the preliminary objection, that appeal was lodged out of time. Consequently, I strike out the appeal.

It is ordered accordingly.



J. R. Kahyoza

JUDGE

15/6/2021

COURT: Ruling delivered in the absence of the parties due to failure to connect to the virtual court. B/C Ms. Catherine present.



J.R. Kahyoza

JUDGE

17/05/2021