

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

BUKOPA DISTRICT REGISTRY

AT BUKOPA

CRIMINAL APPLICATION NO. 37 OF 2021

(Arising from Criminal Case No.12/2019 of Bukoba District Court at Bukoba)

LAURENT BALTAZAR..... APPLICANT

VERSUS

REPUBLIC RESPONDENT

RULING

11/08/2021

NGIGWANA, J

The appellant was arraigned and convicted by the District Court of Bukoba sitting at Bukoba (the trial court) and convicted of offence of Incest by male contrary to section 158 (1) (a) of the Penal Code Cap 16 R: E 2019 (hence forth the Penal Code). Upon such conviction, he was sentenced to serve a sentence of thirty (30) years in jail.

At the trial court it was alleged that the appellant on 9th day of January 2019 during night hours at Bwendagabo Village, Bugabo area, in Bukoba Rural District, within Kagera Region, did have prohibited sexual intercourse with his daughter aged 13 years old.

Aggrieved by both conviction and sentence, the appellant lodged an appeal to this court. When the matter came before me for the first time for mention, Mr. Uhagile, learned State Attorney objected the appeal on the ground that the notice of intention to appeal was filed contrary to section 361(1) (a) of the Criminal Procedural Act Cap 20 R: E 2019.

When the appellant who stood unrepresented was called upon to make his reply, he conceded to the objection raised against this appeal.

Now, the issue to resolve here is whether the Preliminary objection raised has any merit.

Section 361 (1) of the Criminal Procedure Act of 20 R: E 2019 provides that; 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; and

In our case, the sentence of the trial court was pronounced on 29th day of May, 2020, but the appellant filed notice of his intention to appeal to this court on 12th day of June, 2020. That is to say 5 days after the expiry of the mandatory prescribed time of 10 days from the date of the decision/judgment.

In that premise, as correctly pointed out by the learned State Attorney, and conceded by the appellant, the notice was filed out of time, and that

renders the present appeal incompetent. Consequently, I proceed to strike out this appeal for being incompetent. The appellant is at liberty to lodge an application for leave of time within which he can file notice of intention to appeal and an appeal out of time.

It is so ordered.

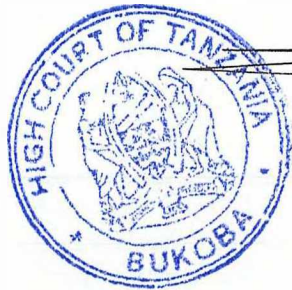



E.L. NGIGWANA

JUDGE

11/08/2021

Ruling delivered this 11th day of August, 2021 in the presence of the Appellant in person, Mr. Uhagile, learned State Attorney and Mr. Edwini Kamaleki, Judge's Law Assistant.




E.L. NGIGWANA

JUDGE

11/08/2021