

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF MUSOMA

AT MUSOMA

Misc. CRIMINAL APPEAL No. 18 OF 2022

*(Arising from the District Court of Serengeti at Mugumu in Economic
Case No. 170 of 2020)*

1. NYAMHANGA MRIMI @ LIMO APPELLANTS

2. MERRY ONYANGO @ OMUGA @ MUGESI MWITA @ MOGOYO

Versus

REPUBLIC RESPONDENT

RULING

18.07.2022 & 25.07.2022

Mtulya, J.:

The enactment of section 361(1) (b) of the **Criminal Procedure Act** [Cap. 20 R.E. 2022] (the Act) provides, in brief, that:

*...no appeal from any finding, sentence or order...shall be entertained unless the appellant has given **notice of his intention to appeal within ten days from the date of the finding, sentence or order...and has lodged his petition of appeal within forty five days from the date of the finding, sentence or order, save that in computing the period of forty five days the time required for obtaining a copy of the proceedings, judgment or order appealed against shall be excluded..***

(Emphasis supplied).

However, the present appellants have lodged their appeal after fifty (50) days without leave of the court in enlargement of

time to file an appeal out of statutory time enacted under the provision of section 361 (2) of the Act. Following the fault in the five (5) days of the delay, Mr. Tawabu Yahya Issa, learned State Attorney, who appeared for the Republic, raised a point of law resisting the jurisdiction of this court.

When he was given the floor of this court to explain the reason of his protest, Mr. Tawabu was very brief and contended that the appeal is incompetent for want of time limitation hence prayed this court to be strike out the same for want of application of the provision in section 361 (1) (b) of the Act. In order to substantiate his claim, Mr. Tawabu stated that section 361(1) (b) of the Act requires appellants to file their appeals within forty five (45) days, but the appellants have preferred the present appeal after fifty (50) days, which is five (5) days of the delay.

According to Mr. Tawabu, the available legal remedy is for appellants to file an application for enlargement of time to file an appeal out of time and produce reason(s) of the five (5) days of the delay. In providing legal assistance to the applicants, Mr. Tawabu preferred them citation of section 361 (2) of the Act.

The appeal was scheduled for hearing on 18th day of July, 2022, and the second appellant alone who appeared for teleconference hearing and submitted that the first appellant, **Nyamhanga Mrimi @ Limo**, is comfortable with the sentence

hence did not protest the judgment of the **District Court of Serengeti at Mugumu** (the district court) in **Economic Case No. 170 of 2020** (the case). As part of appreciating the right to be heard protected under article 13 (6) (a) of the **Constitution of the United Republic of Tanzania** [Cap. 2 R.E. 2002] (the Constitution) and precedent in **Mbeya-Rukwa Auto Parts & Transport Limited v. Jestina George Mwakyoma** [2003] TLR 251, the second appellant was invited to enjoy the same in replying Mr. Tawabu's protest and submission.

However, the second appellant protested the point of objection contending that she had preferred the notice of intention to appeal (the notice) within time and it was immediately after pronouncement of the judgment of the district court, on 11th February 2022. In his brief rejoinder, Mr. Tawabu contended that he does not protest the notice, but the appeal which was filed out of statutory time.

I have perused the record of the present appeal and found that the second appellant had filed the notice within time, on 11th February 2021, after the judgment of the district court in the case delivered on the same date. The record shows further that the second appellant had applied for the copy of the case in the district court on 11th February 2022 and was issued on 23rd February 2022. The second appellant prepared the petition of appeal on 28th March

2022 and forwarded to appropriate authority within time on 31st March 2022 ready for submission and filing in this court. However, there are no explanations in the record why the appeal was filed at this court on 15th April 2022. It is obvious that the second appellant took fifty (50) days to lodge the petition of appeal in this court that is from 23rd February 2022 to 15th April 2022. For the present record, the second appellant has delayed for a total of five (5) days out of statutory time without any explanations in this appeal. According to Mr. Tawabu, the appellant may produce reason(s) of delay in a separate application for enlargement of time to explain what happened in the cited five (5) days of the delay.

I agree with Mr. Tawabu in entirety. The record shows that the appellant is out of statutory time in preferring appeal and the available remedy is struck out order on the appeal as this court lacks mandate to hear and determine the appeal. It is fortunate that there are already precedents of this court and the Court of Appeal (the Court) interpreting section 361 (1) (b) of the Act (see: **Lameck Matagache @ Kigoro & Two Other v. Republic**, Criminal Appeal No. 19 of 2022; and **Moroga Mwita Moroga v. Republic**, Criminal Appeal No. 181 of 2020). As there is practice in this court and the Court in our records, this court cannot depart from the practice, even if it has good reasons to do so.

I am aware that the second appellant prayed to this court to disregard the five (5) days of delay and proceed with the hearing of the appeal despite the five (5) days of the delay. According to the second appellant, she has left children at her home residence without any person to take care of them. I understand the situation the second appellant is going through, but it is unfortunate that this is court of law and justice. It is not a court of empathy or equity (see: **Baclays Bank Tanzania Limited v. Phylisiah Hussein Mcheni**, Civil Appeal No. 19 of 2016 and **Hezron Hudson & Another v. North Mara Gold Mine**, Misc. Civil Application No. 2 of 2022).

This court abides with the laws without any reservations. It is the practice in our jurisdiction that superior courts cannot close their eyes when there are vivid breach of the law. The superior courts always take measures to rectify both illegalities and irregularities in their records (see: **Diamond Trust Bank Tanzania Ltd v. Idrisa Shehe Mohamed**, Civil Appeal No. 262 of 2017; **Joseph Siagi Singwe v. Boniphace Marwa Wang'anyi**, Misc. Land Appeal Case No. 111 of 2021; **Mohamedi Said Hersy v. Ally Hersi**, (PC) Civil Appeal No. 38 of 2021; **Daniel Malibwa v. Masenyi Kisika**, Land Appeal Case No. 4 of 2022).

In the present appeal there is both breach of the law and guidance of the Court on the subject. The appropriate course in

such a circumstance is strike out the appeal. Having said so I have decided to strike out the appeal for want of application of section 361 (1) (b) of the Act and cited precedents of this court and the Court.

It is so ordered.



F. H. Mtulya

Judge

25.07.2022

This Ruling was delivered in chambers under the seal of this court in the presence of the second appellant, Merry Onyango @ Omuga @ Mugesu Mwita @ Mogoyo and in the presence of Mr. Tawabu Issa Yahya, learned State Attorney, for the Republic, through teleconference.

F. H. Mtulya

Judge

25.07.2022