

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

CRIMINAL APPEAL No. 19 OF 2022

*(Arising from the District Court of Serengeti at Mugumu in Economic
Case No. 61 of 2020)*

**1. LAMECK MATAGACHE @ KIGORO APPELLANTS
2. MATIKO MWISE @ WAMBURA
3. CHACHA MARO @ WAMBURA**

Versus

REPUBLIC RESPONDENT

RULING

**18.07.2022 & 25.07.2022
Mtulya, J.:**

The present appeal was scheduled for hearing in this court on 18th July 2022. However, before the hearing took its course, Mr. Tawabu Yahya Issa, learned State Attorney, who appeared for the Republic, raised a point of law protesting the jurisdiction of this court. When he was given the floor of this court to explain the reason of his protest, Mr. Tawabu submitted that the appeal is incompetent and must be struck out for want of application of the provision in section 361 (1) (b) of the **Criminal Procedure Act** [Cap. 20 R.E. 2022] (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 expiry of the forty five (45) days.

According to Mr. Tawabu, the appellants have legal remedy under the provisions of section 361 (2) of the Act by preferring an application for enlargement of time to explain the reason (s) of five (5) days of the delay.

As part of cherishing the right to be heard enshrined 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 appellants were invited to reply Mr. Tawabu. All the appellants conceded the raised objection, but thought that this court may find any other remedy to rescue the appeal as they filed the notice of appeal within time.

However, the prayer was resisted by Mr. Tawabu submitting that the law in section 361 (1) (b) of the Act is certain and clear and entertaining any appeal will be contrary to the law and the decision of this court may be quashed in an appeal for deciding on defective appeal. In bolstering his argument, Mr. Tawabu, cited the authority of the Court of Appeal in the precedent of **Moroga Mwita Moroga v. Republic**, Criminal Appeal No. 181 of 2020 delivered on 14th June 2022 contending that the precedent insists in the application of section 361 (2) of the Act in cases like the present one.

I have perused the record of this appeal and found that the appellants had filed the notice of intention to appeal (the notice) within time, on 13th December 2021, from the date of judgment of the **District Court of Serengeti at Mugumu** (the district court) in **Economic Case No. 61 of 2020** (the case) pronounced on 7th December 2021. After the notice, the appellants applied for the copy of judgment on the same date of judgment, but were issued on 23rd February 2022. However, the appellants declined to prefer memorandum of appeal in this court until when they so wished, 15th April 2022. This is obvious that the appellant's were late for five (5) days out of statutory time in preferring their appeal in this court from the district court hence this court lacks mandate to determine the appeal.

I am aware that the appellants have prayed this court to find other remedies which may rescue the present appeal, but it is unfortunate that this court's hand are tied by the law in determining defective appeals. In any case, I cannot be detained in an area where the law is certain and settled and there is guidance of the Court on the subject. The appellants, if so wish in prosecuting their appeal, may prefer an application for enlargement of time to explain reasons(s) of delay.

Having said so I have decided to decline the appeal and accordingly struck out the same for want of application of section 361 (1) (b) of the Act.

It is so ordered.



A blue ink signature of F. H. Mtulya, written in a cursive style with a long horizontal stroke extending to the right.

F. H. Mtulya

Judge

25.07.2022

This Ruling was delivered in chambers under the seal of this court in the presence of the appellants, Mr. Lameck Matagache @ Kigoro, Mr. Matiko Mwise @ Wambura, and Chacha Maro @ Wambura and in the presence of Mr. Tawabu Issa Yahya, learned State Attorney, for the Republic through teleconference.

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F. H. Mtulya

Judge

25.07.2022