

THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

IRINGA DISTRICT REGISTRY

AT IRINGA

RM. CRIMINAL APPEAL NO. 58 OF 2021

**(Originating from the Court of Resident Magistrate of Njombe, at Njombe in
Criminal Case No. 104 of 2020).**

ERICK CHANAFI.....APPELLANT

VERSUS

THE REPUBLIC.....RESPONDENT

RULING

5th May & 25th July, 2022.

UTAMWA, J.

The appellant, ERICK CHANAFI was charged with and convicted of Rape contrary to Section 130(1), 2(b) & 131(1) of the Penal Code, Cap. 16 R.E 2019 in the Court of Resident Magistrate of Njombe, at Njombe (The trial court). It was alleged by the prosecution that, on the 9th day of May 2020 at Wanging'ombe village within the district of Wanging'ombe in

Njombe Region, the appellant had carnal knowledge of one Merry d/o Agustino Kayamba without her consent. The appellant denied the charge, hence a full trial. Upon the conclusion of the trial, the trial court found him guilty, convicted and sentenced him to serve thirty years' imprisonment. This was through the trial court's judgement date 6th August, 2020 (hereinafter called the impugned judgement).

Aggrieved by the said conviction and sentence, the appellant has now filed the appeal at hand basing on five grounds of appeal. He thus, urged this court to allow his appeal, quash the conviction and sentence. He also urged it to set him at liberty.

The appellant appeared in person and unrepresented via a virtual court link while in the Iringa Prison. The respondent Republic was represented by Mr. Basilius Namkambe, learned Senior State Attorney (henceforth the SSA) who objected the appeal.

Before the hearing of the appeal took off, this court suspected that, the appeal had not been filed within the time prescribed by the law. It then directed the parties to address it on the following two issues namely, whether the appeal at hand was timely filed, and which order should the court make in case the first issue will be answered negatively.

In responding to the court issues, the appellant submitted that, he was convicted on 6th August, 2020. When he arrived at Njombe prison he gave his intention to appeal to the prison authority. He was then provided with a copy of judgment on 15th August, 2020. He submitted further that, he prepared his petition of appeal and handed it to the prison officers. He

does not however, remember the exact date he prepared his petition. He was then transferred to Ludewa prison where he heard no progress of his appeal until on 23rd February, 2022 when he was brought before this court.

On the other side, the learned SSA for the respondent contended that, the record shows that the appellant was convicted on 10th August, 2020 and he lodged his notice of appeal on the same date. He therefore, gave the notice on time as provided under Section 361(1)(a) of the Criminal Procedure Act, Cap. 20 R.E 2019 (The CPA). The appellant was then supplied with the copy of judgment on 15th August, 2020 as he submitted himself. He was thus, required to file his petition of appeal within 45 days from the date he received the copy of judgment as guided under Section 361(1)(b) of the CPA.

The learned SSA further contended that, the record also shows that the appellant signed his petition of appeal on 15th October, 2020. But the same was not filed in court as it does not contain the court's rubber stamp. There is also another petition of appeal that was filed in court on 01st September, 2021 that is a year after the impugned judgment had been pronounced. This second petition of appeal was received by the court as it contained the court's rubber stamp, though it is not signed by court's officer.

It was therefore, the argument by the learned SSA that, the appeal was filed in court on 20th September, 2021, a year after he had given his notice of intention to appeal and after receiving the copy of the impugned judgment. He concluded that, the appeal was filed out of time, hence liable

to be struck out so that the appellant can apply for extension of time to lodge his appeal.

In rejoinder the appellant had nothing of substance to add to his submissions in-chief. He only reiterated the same.

I have considered the record, the law and the submissions from both sides. I now consider the first issue posed herein above. Certainly, sections 361(1)(a) and (b) of the CPA cited by the learned SSA above provide essentially that; in appeals of this nature, an appellant shall firstly give a notice of appeal within 10 days from date of the impugned judgment of the subordinate court. He/she shall then file the appeal within 45 days from the date of the judgment.

Nonetheless, in computing the above time limitation, the law excludes the period of obtaining the requisite documents for appealing purposes. It is undisputed by both parties that, the judgment was delivered on 6th August, 2020. It is also on record that there are two notices of intention to appeal in the court file, one notice was filed in the Resident Magistrate's Court of Njombe on 10th August, 2020 and signed by the court's registry officer. That notice contains a thumb print of the appellant. The second notice of appeal was filed on 12th October, 2020 in the Resident Magistrate's Court of Njombe and signed by the court's registry and the appellant. There are also two petitions of appeal in the court record. The first petition was signed by the appellant on 15th October, 2020 but was never filed in court. This is because, it does not contain a rubber stamp and the registry officer's signature. The second petition of appeal

was signed by the appellant on 01st September, 2021 and filed in the High Court on 20th September, 2021. Nonetheless, the same is not signed by the court's registry officer.

It is also on record that, the copy of the impugned judgment was received in the prison on 18th August, 2029. The proceedings were receive in the prison on 29th September, 2021. Nonetheless, such dates have been repeatedly corrected by a pen. This trend shows that, someone somewhere tried to temper with the record so that it could read in favour of the appellant.

Having considered all the above listed discrepancies, I am of the view that, they are not consistent with a genuine appellant in prison who is committed to take legal steps promptly in pursuing his rights through the appeal. It cannot for example, be imagined as to why the appellant had to file two notices of appeal and two petitions of appeal with some defects pointed above and with different dates. Again, it beats my imagination as to why the dates showing the reception of the judgement and proceedings of the trial court in prison should be repeatedly corrected by a pen. In my view therefore, the purpose of all these odd deeds was none other than trying to cheat the court that the appeal was timely filed, though it was not.

The above demonstrated trend thus, shows that, the appellant is trying to use tricks to approach this court by way of appeal though belatedly in corporation with whoever assisted him in accomplishing the

evil mission. Courts of law cannot condone such conducts since they tend to circumvent the law on time limitation in criminal proceedings.

The law on time limitation in both civil and criminal proceedings (like the appeal at hand) plays a great role in dispensation of justice. It *inter alia*, prompts parties to judicial proceedings to act seriously and punctually in pursuing their genuine rights (if any). That branch of the law also constitutes one of the important gears which aid courts of law in observing constitutional requirements in performing their constitutional mandate of dispensing justice. The provisions of Article 107A(2)(b) of the Constitution of the United Republic of Tanzania, 1977, Cap. 2 R.E 2002 (The Constitution) for example, command that, in delivering decisions in civil and criminal matters, courts shall not delay the dispensation of justice without reasonable ground. It follows thus, that, parties to criminal proceedings, including those who are in prison and who intend to appeal to this court (like the appellant in the present appeal), cannot be permitted to easily float the law on time limitation by applying their talented deception.

Certainly, provisions time limitation laws are procedural rules by nature. Admittedly, the general rule is that, procedural rules should not defeat justice, hence what I can term as the *anti-technicalities* principle. This principle prohibits courts of law from being overwhelmed by procedural technicalities in their adjudicative duties. It instead, urges them to consider substantive justice; see Article 107A(2)(e) of the Constitution. In my further view however, the irregularity committed by the appellant in the appeal at hand cannot be saved by the *anti-technicalities* principle, hence incurable. Reasons for this view are that, the anomalies offend the

mandatory and vital rules of procedure set by the law for appeals of this nature cited above. Procedural laws were not enacted or made for cosmetic purposes. They are vehicles of parties' rights and justice. They are also significant for maintaining uniformity, certainty, stability and predictability of the law. These are among crucial aspects in the process of adjudication in a legal system of any just society like ours.

Procedural laws therefore, have to be respected and observed for the noble role they play in serving the interests of justice. They should not be floated at the whims of the parties or for any lame excuse. Otherwise, they will be rendered nugatory and mere poetic verses which lack the requisite binding force. If disrespect to them is not seriously controlled by courts of this land, matters in our courts will be handled arbitrarily and randomly, hence chaos and injustice will prevail.

Indeed, by underscoring the above view, I am not advocating for courts to be overwhelmed by procedural technicalities in dispensing justice. The point I want to bring home is that, the existence of the *anti-technicalities* principle highlighted above does not mean that procedural rules should be disregarded altogether. Rather, it emphasizes respect to them except where they become a threat to justice, which is not the case in the matter at hand. No wonder courts have emphasized respect to procedural rules in opportune circumstances regarding criminal proceedings. The Court of Appeal of Tanzania (The CAT) for example, observed in the case of **Mukeshi Mlowe v. Republic, Criminal Appeal No. 125 of 2007, CAT at Iringa** (unreported) that, despite the sympathy by the Court to the appellant who had filed a notice of intention to appeal to the Court out of

time for delays caused by prison officers of the prison in which he had been jailed, the procedural rules are there to be observed. This court also echoed the emphasis in the case of **Alberto Hassan v. Republic, Criminal Appeal No. 10 of 2006, High Court of Tanzania at Songea** (unreported) in which it held that, in criminal trials procedural laws are safeguards which filter and avoid victimization and ensure that convictions are on valid evidence.

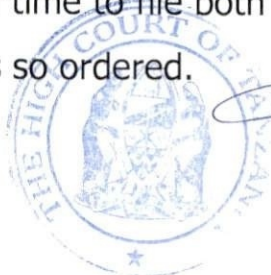
Furthermore, the CAT in the case of **Zuberi Mussa v. Shinyanga Town Council, Civil Application No. 100 of 2004, Court of Appeal of Tanzania at Mwanza** (unreported), also made useful remarks on procedural laws. It observed that, even the provisions of Article 107A (2) (e) of the Constitution which prohibit courts from being overwhelmed by procedural technicalities (i.e. which underscore the *anti-technicalities* principle highlighted earlier), did not mean that procedural rules should be disregarded.

Undeniably, the **Mukeshi case** (supra) and the **Alberto case** (cited above) did not directly decide on issues related to the above cited provisions of the CPA on appeals from subordinate courts to this court. Nonetheless, they underscored the significance and respect to procedural rules in criminal proceedings. Furthermore, though the **Zuberi case** (supra) was a civil matter by nature, the significance for respecting procedural rules it highlighted applies *mutatis mutandis* in criminal proceedings. This is because, the above discussed important role of such rules is the same in both kinds of proceedings.

It follows thus, that, acquiescing the appellant's unauthorized practice of filing his appeal to this court in the manner demonstrated above, which said manner is against the law, will amount to condoning such hazardous random procedures of appeals.

I thus, agree with the learned SSA that, the appeal at hand was filed out of time. I accordingly answer the first issue posed above negatively that, the appeal was time barred.

As to the second issue also posed above, I am of the settled opinion that, the law is clear. It guides that, an appeal which is time barred is liable to be struck out for incompetence. I therefore, strike out the appeal at hand. If the appellant still wishes, he may file a proper appeal subject to the law of limitation. This course will firstly involve applying and obtaining extension of time to file both the notice of appeal and the actual appeal out of time. It is so ordered.



JHK UTAMWA
JUDGE
25/07/2022

25/07/2022

CORAM; JHK. Utamwa, J.

Appellant; present in person.

For Respondent; Ms. Jackline Nungu, State Attorney.

BC; Gloria, M.

Court; Judgment delivered in the presence of the appellant in person and Ms. Jackline Nungu, learned State Attorney for the respondent, in court, this 25th July, 2022. Right of appeal is explained.



JHK UTAMWA
JUDGE
25/07/2022.