

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(SONGEA DISTRICT REGISTRY)**

**AT SONGEA**

**CRIMINAL APPEAL NO. 23 OF 2022**

*(Originating from Criminal Case No. 52 of 2021 before Mbinga District Court at Mbinga)*

**KACHANGA OSMUND KUNUNDA.....APPLICANT**

**VERSUS**

**THE REPUBLIC..... RESPONDENT**

**RULING**

**Date of last order:** 16/08/2022

**Date of Ruling:** 22/08/2022

**U. E. MADEHA, J.**

When the appeal was called for hearing today, Ms. Heleni Chuma State Attorney for the Respondent/ Republic rose to argue a preliminary objection that the Appellant has not file notice of intention to appeal. Also, she submitted that the Appellant has filed the appeal out of time. She contended that the ruling which allowed him to file the notice of appeal and appeal was pronounced on 14<sup>th</sup> of July 2022 whereby the Appellant was given ten days. Therefore, he was supposed to file the notice of appeal and appeal by 23<sup>rd</sup> July of 2022.

Ms. Hellen Chuma averred further that, the Court records show that the Appellant filed his appeal on July 28, 2022, without filling out the notice of the intention to appeal. Hence, the Appellant has delayed in filing his appeal for ten days. Lastly, she prayed that this appeal be struck out for being incompetent.

In conjunction with the foregoing submission of the State Attorney, the Appellant alleged that he filed his appeal on time because he received the copy of ruling late. In rejoinder, Ms. Hellen Chuma prayed that the appeal be struck out in order to give chance for the Appellant to file the notice and appeal out of time.

I have gone through the Court record and observed that the ruling that instructed the Appellant to file an appeal was read out on 14.07.2022. But the Appellant filed his appeal on 28.07.2022 whereby he was late in filing his appeal for a period of five days. He claimed that he received the copy of the ruling late, in my view he has failed to furnish any sufficient reason for such delay taking into account that he was present in person on the date of the ruling. Worse enough the Appellant has also not lodged the notice of intention to appeal, the same which is a vital document in

initiating an appeal [*see section 361(1)(a) of the Criminal Procedure Act, Cap 20 Revised Edition 2022*].

Under the circumstances, though I sympathize with the Appellant who is a prisoner for some further delay that he is likely to undergo there is no short cut, the law must be complied with. Consequently, I uphold the preliminary objection, henceforth strike out the appeal. The Appellant is given fourteen (14) days' time to lodge his Notice of Appeal and Petition of Appeal, after being availed with the copy of this ruling. It is so ordered.

**DATED at SONGEA this 22<sup>nd</sup> Day of August 2022**



A handwritten signature in blue ink, appearing to read "U.E. MADEHA", is written over a horizontal line.

**U.E. MADEHA**

**JUDGE**

**22/08/2022**