

IN THE HIGH COURT OF TANZANIA

TABORA DISTRICT REGISTRY

AT TABORA

DC. CRIMINAL APPEAL NO. 2 OF 2022

[Originating from Tabora District Court in Criminal Case no. 17 of 2021]

DANIEL S/O KAWAWAAPPELLANT

VERSUS

THE REPUBLIC RESPONDENT

RULING

Date of Last Order: 22/08/2022

Date of Delivery: 22/08/2022

AMOUR S. KHAMIS, J:

Prior to hearing of this appeal, Ms. Alice Thomas, learned State Attorney for the Republic, drew attention of the Court that the notice of appeal was out of time.

She contended that the impugned judgment was delivered on 23/12/2021 and a notice of appeal lodged on 6/01/2022, well beyond ten (10) days within which it was to be filed.

Mr. Kelvin Kayaga, learned advocate for the appellant, conceded that the notice was out of time but asserted that the applicant signed it on 29/12/2021.

He contended that being a prisoner, the applicant presented the notice to the prison authorities for onward transmission to Court.

Further, Mr. Kayaga contended that the prison authorities' delay to transmit the notice of appeal to the Court could not be penalised against the applicant who dutifully prepared it.

The issue is whether the notice of appeal was timely lodged. Section 361 (1) (a) of **THE CRIMINAL PROCEDURE ACT, CAP 20, R.E. 2002** provides that no appeal shall be entertained unless the appellant has given notice of intention to appeal within ten (10) days from date of the findings, sentence order, or in case of a sentence of corporal punishment only, within three (3) days of the date of such sentence.

I have examined the disputed notice in this matter. The same was signed by the appellant on 29 December 2021 and signed by the Officer in Charge, Uyui Central Prison Tabora on 30 December 2021.

However, the notice was presented for filing in Court on 6 January 2022.


The law and practice of this Court has been to count the duration of notice from the date of its presentation in Court and not on a date that was allegedly signed by the intended appellant.

Counting the time from 23 December 2021 when the impugned judgement was delivered to 6 January 2022 when the notice was lodged in Court, it is beyond ten (10) days prescribed by the law.

I therefore hold that the notice was lodged out of time and renders the appeal incompetent.

Consequently, this appeal is hereby struck out. For the interests of justice, and exercising the powers of this Court under Section 361 (2) of the CPA, Cap 20, R.E 2022, leave is granted to the applicant to lodge a fresh notice of appeal within ten (10) days and a petition of appeal within forty five (45) days from date of delivery of this ruling.

It is so ordered.

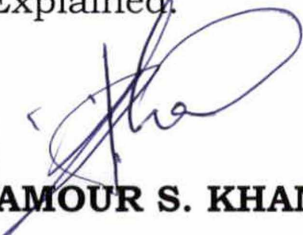


AMOUR S. KHAMIS
JUDGE
22/08/2022

ORDER

Ruling delivered in Chambers in presence of Ms. Alice Thomas, State Attorney for the Republic and Mr. Kelvin Kayaga, advocate for the appellant. The applicant is also present.

Right of Appeal is Explained.



AMOUR S. KHAMIS
JUDGE
22/08/2022