

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IRINGA DISTRICT REGISTRY**

AT IRINGA

CRIMINAL APPEAL NO. 52 OF 2021

ALDO LAINI SANGA APPELLANT

VERSUS

THE REPUBLIC RESPONDENT

**((Being an appeal from the Judgment of the District Court of Makete at
Makete))**

(Hon. I. MSACKY, RM)

dated the 29th day of July, 2021

in

Criminal Case No. 38 of 2021

RULING

Date of Ruling: 15.08.2022

S.M. KALUNDE, J.:

The appellant, ALDO LAINI SANGA, was charged with and convicted of malicious damage to property contrary to sections 326(1) of **the Penal Code [Cap. 16 – R.E. 2019]**. The District Court of Makete which tried him, convicted him as charged and sentenced him to serve a custodial sentence of one year.

It was alleged that on the 27th May, 2021 at around 16:00 hrs. at Mago village within Makete District within Njombe Region, the appellant unlawfully did cut and destroyed 1763 trees make "Paina"

valued at Tshs. 18,566,500.00 the property of one ATILIO REMIJO MAHENGGE. The trial court believed the prosecution case and concluded that the charge against the appellant was proved beyond reasonable doubt. The appellant was convicted and sentenced as stated earlier. Aggrieved by that decision, on 31.08.2021 the appellant filed the present appeal.

On 11.05.2022 in the presence of both parties, the matter was scheduled for hearing on 06.06.2022. However, on the respective day the appellant did not appear. The matter was adjourned to 04.07.2022, still the appellant did not enter appearance, in the interest of justice the matter was adjourned for hearing on 15.08.2022. surprisingly, the appellant could not enter appearance still. When the counsel for the respondent **Ms. Hope Charles Massambu**, learned State Attorney took to the floor she informed the Court that the matter was scheduled for hearing in the presence of both parties. She added that since then the appellant had failed to enter appearance on several occasions without notice to Court. The counsel was of the view that the appellant has lost interest or abandoned the appeal. She prayed that the appeal be dismissed under section 383(1) of **the Criminal Procedure Act, Cap. 20. R.E. 2022** ("the CPA"). Further to that, the counsel submitted that if the appellant is interested in further pursuing his appeal and has good ground for non-appearance the appeal may be restored under section 383(3) of the CPA.

Undeniably, the records show that the appellant has a tendency of failing to appear before the Court. The records show that ever since this matter was filed on 31.08.2021 the appellant has entered appearance once. That was on 11.05.2022 when the matter was adjourned for hearing. After that the appellant have never entered appearance and no information or notice has been issued. Section 383 of the CPA regulates appearance of parties in criminal appeals. The entire section reads:

"383.- (1) Where, on the day fixed for the hearing of an appeal under sections 366 and 378 or any other date on which the hearing may be adjourned, the appellant or his advocate as the case may be, does not appear when the appeal is called on for hearing, the High Court may make an order that the appeal be dismissed.

(2) Where the appellant or his advocate as the case may be on an appeal brought under sections 366 and 378 does not appear and the High Court is satisfied that the respondent or his advocates as the case may be was duly served with the notice of hearing, the High Court may proceed to hear the appeal ex-parte or may adjourn the hearing to another date and give notice thereof to the respondent.

(3) Where an appeal is dismissed under subsection (1) the appellant or his advocate, as the case may be, may apply to the court for re-admission of the appeal and, where he satisfies the court that he was prevented by any sufficient cause from appearing when

***the appeal was called on for hearing,
the court may re-admit the appeal.***

(4) Where at the hearing of an appeal the respondent does not appear personally the High Court may make an order requiring the personal attendance of the respondent and, if the respondent fails to comply with such order, may issue a warrant for the arrest and production of the respondent before the High Court on a date and time specified in the warrant. [Emphasis is mine]

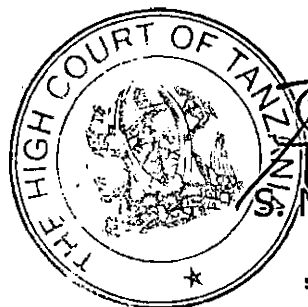
I am also aware that under section 366(2) of the CPA an appellant, whether in custody or not, is entitled to be present at the hearing of his appeal. However, in accordance with the above provision, particularly subsection (1), where the appellant or his advocate is not present or does not appear at the date fixed for hearing or any other date on which the hearing may be adjourned, the Court may make an order that the appeal be dismissed. The law, under subsection (3), allows the Court to re-admit the appeal upon an application made by the applicant and upon satisfying the Court that he was prevented by some sufficient cause from appearing when the appeal was called on for hearing.


In the case at hand, the appellant lodged the appeal on 31.08.2021, but he has entered appearance only once. Further to that he has failed to appear before this court for hearing for the last three consecutive times contrary to the dictate of the law without any sufficient cause.

In the circumstances, I agree with the prayer by the counsel for the respondent, I hereby proceed to dismiss the appeal for non-appearance.

It is so ordered.

DATED at IRINGA this 15th day of AUGUST, 2022.




S. M. Kalunde
JUDGE