

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

ARUSHA DISTRICT REGISTRY

AT ARUSHA

CRIMINAL APPEAL No. 04 OF 2021

(C/F the District Court of Arusha Criminal Appeal No. 17 of 2020 original Arusha Urban
Primary Court in criminal case number 1732 of 2020)

FURAHA ELIAS.....APPELLANT

VERSUS

EZEKIEL JOSEPH@ BABAA..... RESPONDENT

JUDGMENT

07th September & 21th October 2022

TIGANGA, J

The appellant herein being aggrieved by the decision of the District Court of Arusha in Criminal Appeal No. 17 of 2020 appealed before this court by lodging one ground of appeal as follows;

- i. That, first appellate court erred in law for holding that Criminal Appeal No.17 of 2020 was time barred.

This appeal originates from the Primary Court of Arusha District, at Arusha Urban in Criminal Case No. 1732 of 2020 in which the respondent stood

charged with an offence of threatening to kill the appellant contrary to section 89(2)(a) of the Penal Code [Cap. 16 R.E 2019]. After full trial, the trial Primary Court found that the complainant, who is the appellant in this case failed to prove the case beyond reasonable doubt consequent of which the respondent was acquitted. Following that verdict, the appellant was aggrieved, as a result, he appealed before the District Court of Arusha at Arusha vide Criminal Appeal No. 17 of 2020. Her appeal was dismissed for being time barred.

It is following that decision which also aggrieved him, the appellant appealed to this court as hereinabove indicated. At the hearing, the appellant was represented by Elibariki Maeda, Learned Counsel, while the respondent was represented by Mr. Emmanuel Kileo, also learned counsel. At the hearing of this appeal which was conducted orally, the learned Counsel for the appellant submitted in support of the sole ground of appeal that, the District Court of Arusha erred in law to hold that Criminal Appeal No. 17 of 2020 was time barred.

He further argued that, in law, the period in which an aggrieved party has to appeal starts to run from the date the decision intended to be appealed against was delivered. He continued arguing that, the decision of

Arusha Urban Primary Court in Criminal Case No. 1732 of 2020 was delivered on the 23rd October 2020, therefore, the period to file the petition of appeal started to run from 24th October 2020 hence, the last date to file the petition of appeal was on the 22nd November 2020.

The Counsel for the appellant further submitted that, according to the calendar of that year, that day was Sunday, therefore in that month of October was a long one as it had 31 days. It is his further submissions that, under section 60(1)(a)(e) of the Interpretation of Laws Act, [Cap 1 R.E 2019] it is clearly provided that, Sundays, Saturdays and the public holidays are excluded from, in computing the time for the filling of an appeal. He further argued that, since the final days for filing an appeal were the weekends, then he was justified to file such appeal on the next day which is not excluded. He supported his argument by the case of **Zainabu Mussa Mbanga vrs Saidi Ibrahim**, PC. Civil Appeal No. 17 of 2020 before the High Court of the United Republic of Tanzania, Arusha District Registry (unreported).

In reply to the submission in chief, the learned Counsel for the respondent submitted that, he supports the judgment of the District Court, he further submitted that, the decision that was challenged before the

District Court was delivered on the 23rd October 2020 while an appeal before the District Court was filed on 23rd November 2020, which when counting it makes a total of 34 days. For that reason, 22nd November 2020 was not the last day to file the said appeal. The Counsel submitted further that, the law requires an aggrieved party to file an appeal within the period of 30 days. The moment the particular appeal was filed. It was on the 34th day since the delivery of the judgment of Arusha Urban Primary Court, in his view, it goes without saying that, such appeal was time barred as it contravened the law.

The Counsel for the respondent submitted further that, the filing of an appeal was late for almost four days without any logical explanation as to why it was filed late. The Counsel further submitted that, the cited authority i.e. **Zainabu Mussa Mbanga vrs Saidi Ibrahim**, (supra), the delay was of a single day which was justifiably excluded as the law provides. The counsel finalized his submissions by praying this court to dismiss the appeal as it lacks merit, and he insisted that if it happens that this court allows this appeal, it goes without saying that it will be a blessing to every one wishing to contravene the laws as it is *ex facie* observed that the matter was filed out of time.

In rejoinder submissions, the Counsel for the appellant did nothing rather than a reiteration of his submissions in chief, for that reason I wish not to make unnecessary repetitions of the appellant's submissions. The reiteration marked the winding up of both parties' submissions.

From what the parties have submitted and bearing in mind that this is an appeal, the main issue for determination is whether the appeal before this court has merits. In deliberating upon the Parties' submissions, I find it necessary to point out that 30 days' period of appeal entails that the Party intending to appeal has to utilize them, and if other days in the period of 30 days have not been utilized prudently one who had the duty to utilize them has the duty to justify his failure to use the earlier dates in that 30 days' period to appeal. This position is rooted in the wording of the law itself, that the appeal should be **"within 30 days after the date of the decision or order against which the appeal is brought"**. The corner stone of my position is that, the act of the appellant to scramble for time at the last days of a 30 days' period to appeal to me sounds very unserious. The law is very clear under section **20(3) and (4) of the Magistrates Courts Act**, [Cap 11 R: E 2022] provide that;

"20(3) Every appeal to a District Court shall be by way of petition and shall be filed in the District Court within thirty days after the date of the decision or order against which the appeal is brought.

(4) Notwithstanding the provisions of subsection (3)(a) the District Court may extend the time for filing an appeal either before or after such period has expired."

From the above position of the law, it is clear that the appellant failed to show this court as to why he did not use the 30 days' period to appeal instead he scrambles for time very inordinately unnecessarily. It is my considered view that, the appellant was not justified to appeal before District Court of Arusha without first applying for the extension of time to file his appeal which is a legal requirement when one appeals before the District Court out of time.

I subscribe to both parties' position as provided under section 60 of the Interpretation of the Laws Act, that Saturdays, Sundays and the public holidays are excluded from the intended period of 30 days to appeal. The made reference on **section 60(1), (e) of the Interpretation of laws Act**, cap 1[R: E 2019] provides as follows;

60(1) In computing time for the purposes of a written law

(e) where the time limited for the doing of a thing expires or falls upon an excluded day, the thing may be done on the next day that is not an excluded day.

(2) For the purposes of this section, "excluded day" means Saturday, Sunday or public holiday throughout or in that part of which is relevant to the event, act, thing or proceeding concerned."

The counsel for the respondent, although he agrees with what section 60 **(1), (e) of the Interpretation of Laws Act**, [Cap. 1 R.E 2019], provides, he submitted that, is possible and practicable where the appellant appeals just the next day after the expiry of 30 days. in his view, the appellant appealed to the District Court on the 34th day from the date of delivery of the judgment, unlike the cited of **Zainabu Mussa Mbanga vs Saidi Ibrahim** (supra) where the delay was of a single day. This has taken me to the 2020 calendar. There is no dispute that the judgment of the trial Primary Court was delivered on 23rd October 2020, therefore, computation of 30 days within which to appeal was to commence on 24th October 2020. Now, computing from that date, 30 days expired on 22nd day of November 2020. It is also evident from the record that, the appeal was filed and actually received by the District Court on 23rd day of November, 2020, the 31st day.

That defeats the allegations by the counsel for the respondent who said it was on 34th day. It is also evident that, 22nd November 2020 was on Sunday therefore, an excluded day within the meaning of section 60(2) of the **Interpretation of the Laws Act** (supra) is an excluded day.


Of course, I agree that the counsel did not state where was he in all 28 days to wait for the deadline, and why the appellant didn't anticipate that the last day will be a weekend. However, all these questions unanswered, do not obviate the provision of the law which carries the intent of the parliament to exclude this kind of a day.

In the upshot, this appeal is found to be meritorious. It is allowed. The decision of the District Court dismissing the appeal on the ground that it was time barred is hereby quashed and set aside. The appeal No. 17 of 2020 be re admitted, heard and determined on merits.

It is accordingly ordered.

DATED at ARUSHA this 21st day of October, 2022




J.C. TIGANGA
JUDGE.