

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

**(DODOMA DISTRICT REGISTRY)  
AT DODOMA**

**DC CRIMINAL APPEAL NO. 60 OF 2021**

(Originating from the District Court of Dodoma in Criminal Case No. 33 of 2020)

**JONAS DANIEL @ SIMEO ..... 1<sup>ST</sup> APPELLANT**

**SEMENI MGONELA ..... 2<sup>ND</sup> APPELLANT**

**VERSUS**

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

**RULING**

17/08/2022 & 05/10/2022

**KAGOMBA, J.**

On 4/6/2021 the appellants filed in this Court this appeal against the decision of the District Court of Dodoma at Dodoma ("the trial Court") which convicted them with the offence of theft contrary to section 258 and 265 of the Penal Code [Cap 16 R.E 2019] (now R.E 2022) and were sentenced to serve three (3) years imprisonment.

Before going into the merit of the appeal, the Republic, being the respondent, filed a notice of preliminary objection stating that the appeal was time barred, hence contravened the provision of section 361(1)(b) of the Criminal Procedure Act, [Cap 20 R.E 2019] (now R.E 2022) ("CPA").

Prior to the hearing and determination of the preliminary objection, the 1<sup>st</sup> appellant, Jonas Daniel @ Simeo informed the Court that the 2<sup>nd</sup>

appellant, Semen Mgonela was discharged by court. For this reason, the appeal was being pursued by the 1<sup>st</sup> appellant only (henceforth "the appellant").

The preliminary objection was heard on 17/8/2022 where Ms. Sara Nexius, learned State Attorney, appeared for the Republic while the appellant fended himself.

Ms. Nexius submitted that the appeal was filed out of time against the provision of section 361(1)(a) & (b) of the CPA, hence time barred. She clarified that the judgment of the trial Court, which was being challenged by the appellant, was delivered on 30/9/2020. That, according to Section 361(1)(a) of the CPA, a notice of intention to appeal was to be filed within ten (10) days after delivery of the judgment. In this case, the same was filed on 3/11/2020, being time barred.

Likewise, Ms. Nexius submitted that the petition of appeal was to be filed within forty-five (45) days from the date of the decision but, in this case, it was filed on 3/6/2021 against the provision of section 361(1)(b) of the CPA. Thus, it was her contention that the appellant was obliged by law to first apply for extension of time before filing both the notice of intention to appeal and his petition of appeal.

Ms. Nexius further contended that, apart from the appeal being time barred, both the notice of intention to appeal and the petition of appeal contained irregularities. She submitted that the notice of intention to appeal

was filed in this Court instead of being filed in the court that convicted him, contrary to the requirement of the law. She cited to this effect the case of **DPP V. Sendi Wambura and 3 others**, Criminal Appeal No. 480 of 2016, Court of Appeal of Tanzania at Bukoba.

The appellant, on his part, had nothing to reply on the submission made by the learned State Attorney. He was, of course, a lay person not versed with the law of limitation contents.

From the submissions made by the learned State Attorney and the notice of preliminary objection filed in this Court, the issue to be determined by this Court is whether the preliminary objection is meritorious. Therefore, the court has to focus on whether the filing of the challenged appeal was in compliance with the provision of section 361(1)(b) of the CPA, which states that;

*"361.-(1) Subject to subsection (2), no appeal from any finding, sentence or order referred to in section 359 shall be entertained unless the appellant-*

*(a) (Not applicable).*

*(b) **has lodged his petition of appeal within forty five days from the date of the finding, sentence or order**, save that in computing the period of forty five days the time required for obtaining a copy of the proceedings, judgment or order appealed against shall be excluded".*

Guided by the above cited provision of the law, it is obvious that the appellant had to file his appeal within forty-five days from the date when the impugned decision of the trial Court was delivered.

Since the appellant's appeal springs from the decision of the trial Court which was delivered on 30/10/2020, the appellant's forty-five (45) days to file his petition of appeal was to be done on or before 14/12/2020. In clear infringement of the cited provision of section 361(1)(b) of the CPA, the petition of appeal was filed on 04/06/2021 after expiry of seven (7) months from the date of trial Court's findings which renders the appeal incompetent for being filed out of time.

I have, however, considered the fact that the trial Court's proceedings were certified on 09/02/2021 which could be the date the certified copy of judgment was obtained. Even after considering the said fact, counting from the date of the certification, which was 09/2/2021, to the date of filing of the petition of appeal, which is 04/06/2021, more than **115 days** have elapsed. In any case, the appeal before the court was filed out of time. I accordingly, sustain the preliminary objection and the appeal is therefore struck out.

**Dated at Dodoma** this 5<sup>th</sup> day of October, 2022.



  
ABDI S. KAGOMBA

**JUDGE**