

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

AT BABATI

CRIMINAL APPEAL No. 4 OF 2022

(Originating from Criminal Case No. 81 of 2022 from Babati District
Court)

JUMA HAMISI GIREDA.....APPELLANT

VERSUS.

THE REPUBLIC.....RESPONDENT

Date: 24/11/2022

BARTHY, J.

RULING

Before me is an appeal from the decision of the District Court of Babati arising from Criminal Case No. 81 of 2022. The appellant before the trial court was indicted with unnatural offence C/S 154(1) (a) and (2) of the Penal Code, [Cap. 16 R.E 2002], hence convicted and sentenced to life time jail term.

The appellant Juma Hamis Gireda being dissatisfied with the decision of the trial court filed the appeal before this court.



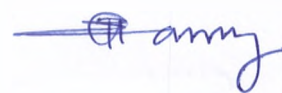
On the first day of hearing, the appellant appeared in person and the respondent was represented by Ms. Blandina Msawa, the state attorney.

Before the court was set to hear the appeal on merit, Ms. Msawa addressed this court that the appeal before this court was filed out of time.

It was her submission that, this appeal was filed before this court on 9th November, 2022 whereas the copies of the proceedings and judgment were supplied to the prison on 15th September 2022, Ms. Msawa was content that the appeal was filed after 54 days have lapsed excluding the time the copies of proceedings and judgment were dully supplied to the appellant.

She made reference to section 361(1)(b) of the Criminal Procedure Act, Cap 20 R.E. 2019 which requires the appeal to be filed within 45 days. She further contended that; the records supplied to the respondent shows no leave of the court was granted to extend time to file this appeal.

Ms. Msawa argued, to file the appeal within time is the requirement of the law. Failure to observe the same renders the appeal incompetent and ought to be dismissed.



The appellant on this issue had nothing to argue claiming he was in prison and he did not know the procedure. It is the settled law that ignorance of the law is not the defence, the same has been stated by this court in the case of **Samwel Masa Koronya v Republic**, Criminal Appeal No. 22 of 2020, High Court Musoma (unreported).

Taking on board the arguments of both sides, the provision of section 361(1)(b) of the Criminal Procedure Act, Cap 20 R.E. 2019 provides;


(1) Subject to subsection

(a) ...

(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.

Having gone through the arguments of both sides and the provision of the law, I have closely scrutinized the records before this court and it is clear that the petition of appeal was filed out time. As the appeal was filed before this court on 9/11/2022 while the copies of the proceedings and judgment were supplied by court to the appellant on 15/9/2022.



The appellant has only raised the issue of ignorance which is not the defence; it is also clear that he did not obtain the leave of the court to file the appeal out of time.

In those circumstances, I am in agreement with Ms. Msawa the state attorney that, the provision of the law clearly requires the appeal to be filed within 45 days after being supplied with the copy of the proceedings and judgment. In the event, from the foregoing reasons I find that this appeal is incompetent and the only remedy is to struck it out.

It is so ordered.

DATED at **Babati** this 24th November, 2022.



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

G.N. BARTHY

JUDGE

24/11/2022

Delivered in the presence of the appellant in person and Ms. Blandina Msawa the state attorney.