

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(SONGEA DISTRICT REGISTRY)

AT SONGEA

DC. CRIMINAL APPEAL NO. 6 OF 2022

(Originating from the District Court of Tunduru Criminal Case No. 159 of 2021)

MASANJA KAZONDE PATRICK..... APPELLANT

VERSUS

THE REPUBLIC..... RESPONDENT

RULING

25.04.2022

U. E. Madeha, J.

The Applicant has appealed against the decision of the District Court of Tunduru concerning Criminal Case No. 159 of 2021. Before the trial Court, the Applicant was charged with the offence of cattle theft contrary to *Section 268 (1) (3) of the Penal Code [Cap. 16 R.E. 2019]*.

As a matter of fact, the Applicant was convicted and sentenced in his own plea of guilty. The allegation against the Applicant is that, on 26.11.2021 at Ngapa, Tunduru District in Ruvuma Region, the Applicant stole one cow worth two hundred and fifty thousand (250,000) shillings the property of Juma Kiloti.

To add to it, the Applicant was arrested and sent to Tunduru District Court for stealing the cattle whereby he pleaded guilty to the charge. He confessed to have committed the offence. At the end of the trial, the conviction was drawn against the Applicant for cattle theft and as a result, he was respectively sentenced to serve five (05) years imprisonment. The Applicant was aggrieved by the findings of the trial Court. He is still dissatisfied with the sentence and conviction. Thus, approached this Court to prosecute his appeal.

At the hearing of the appeal, the Applicant appeared in person. He was not represented, therefore, defended for himself whereas, the respondent/Republic was represented by Ms. Generoza Montana, the learned State Attorney.

The Applicant submitted that he had filed the notice of intention to appeal to the High Court instead of filling out the notice of intention to appeal to the sub-ordinate Court. He prayed for his appeal to be heard on merit.

Ms. Generoza Montana, the respondent learned State Attorney submitted that, the case was scheduled for the hearing of appeal, before the commence of hearing they had filed the preliminary objection that is, the Applicant's notice of intention to appeal exceeds ten (10) days as directed by the Law.

Ms. Generoza Montana further clarified that the Applicant was convicted on 30th, November 2021 at Tunduru District Court, but he filed the notice of the intention to appeal on 13th, December 2021. That the Applicant was late in filing the notice of intention to appeal for three days contrary to *section 361 (1) (a) of the Criminal Procedure Act Cap 20 (R.E.2019)* in which it is stated 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 Applicant (a) has given notice of his intention to appeal within ten days from the date of the finding, sentence or order or, in the case of a sentence of corporal punishment only, within three days of the date of such sentence;"

In the first place, the learned State attorney raised a preliminary objection on the point of law that, the appeal is improper before the Court as the Applicant did not file his notice of intention to appeal at the Tunduru District Court but he filed the same at the High Court contrary to the provision of *Section 361 (1) (a) of the Criminal Procedure Act Cap 20 R.E. 2019.*

Reference is made to the case of **Farijala Shabani Hussein and Others v. the Republic**, Criminal Appeal No. 274 of 2012 CAT at Dar-es-Salaam which stated that: -

"Addressing now the preliminary point of objection raised by the respondent, we deem it opposite to begin by extracting the relevant section 361 (1) (a) of CPA which makes provision for giving of notice of intention to appeal.

361(1) subjects to the sub-section (2), no appeal from any finding, sentence, or order referred to in section 359 shall be entertained unless the Applicant: (a) has given notice of his intention to appeal to the trial subordinate Court within ten (10) days from the date of finding, sentence of corporal punishment only, within three (03) days of the date of such sentence."

Furthermore, the learned state attorney added that the notice of the intention to appeal was filed at the High Court instead of filling the notice to the subordinate Court which is contrary to the law. Reference was also made to the case of **Mwesigwe Geoffrey Tito Bushahu v. The Republic**

Criminal Appeal No. 355 of 2014 CAT Bukoba, whereby the Court stated that:-

"361(1) Subject to subsection (2), no appeal from any findings, sentence or order referred to in section 359 shall be entertained unless the Applicant; -

- (a) Has given notice of his intention to appeal to the subordinate Court within Ten days from the date of finding. Sentence or order, in the case of sentence of corporal punishment only, within three days of the date of such sentence."*

In view of the position rendered by the Court of Appeal in the case of **Mwesigwe Geoffrey Tito Bushahu** (Supra), I concur with the Senior State Attorney for the Republic and stress that the Applicant was required to file a notice of his intention of appeal in the subordinate Court where he was convicted, and he was required to submit the notice of intention to appeal within Ten (10) days after the conviction.

Having gone through the Applicant's notice of intention to appeal, I have realized that it was addressed to the High Court and not to the District Court. The result of all this is the striking out of the appeal. Thus, the Applicant is

required to apply for an extension of the time to file the notice of intention in order to appeal outside the prescribed period, in the High Court.

Consequently, the Applicant's failure to file the notice of appeal at the subordinate Court renders the appeal incompetent and incurably defective.

Conclusively, it is hereby struck out. Order accordingly.

DATED and **DELIVERED** at **SONGEA** this 25th day of **April** 2022.



U. E. Madeha
.....
U. E. MADEHA

Judge

25/04/2022