

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

**(SUMBAWANGA DISTRICT REGISTRY)**

**AT SUMBAWANGA**

**PC CRIMINAL APPEAL NO. 1 OF 2021**

(C/O Sumbawanga District Court - Criminal Appeal No. 7 of 2021 Original Criminal Case No. 747 of 2020 from Urban Primary Court of Sumbawanga at Sumbawanga)  
(G. J. William, RM)

**CHRISTINA D/O MAZWILE ..... APPELLANT**

**VERSUS**

**JENEROZA D/O ZENO ..... RESPONDENT**

**RULING**

Date: 14 & 14 March, 2022

**NKWABI, J.:**

This ruling arises from an anomaly discovered by this court in the court record. The anomaly is in respect of lodgment of the petition of appeal in this PC Criminal Appeal No. 1 of 2021. While Judgment, the subject of this appeal, was delivered by the District Court on 11/06/2021, the petition of appeal appears, according to the stamp and date affixed on the petition of appeal, was lodged on 04/03/2021. Further, on the rear side of the petition of appeal, the bench clerk, who received the petition of appeal from the appellant, inscribed that the petition of appeal was presented before him/her for filing on 4<sup>th</sup> day of March 2021. Of course, the date on which the appellant signed the petition of appeal appears to have been

signed by the appellant is erased and written to show that she signed and verified it on 4<sup>th</sup> March 2021. When I called upon the parties who appeared in person, unrepresented, to address me on the anomaly, the appellant argued that she filed her appeal in the District Court after the judgment of the District Court was delivered, that is, in June 2021. She further said that she struggled to file the appeal from the District Court as they did not want her to appeal.

When it was the turn of the respondent to respond, she said she knows nothing about the situation as the documents were merely served upon her and she replied them. In rejoinder, the appellant insisted that she lodged her appeal to the High Court in the District Court after the judgment of the District Court was delivered. She then prayed for justice.

It is trite law that, appeals are lodged after the decision against which the appeal is preferred. To the contrary, this appeal appears, according to the record, that it was filed prior to the judgment of the District Court was pronounced. To me, I find that the appeal is incompetent and therefore it is as if there is no appeal in this court as it contravenes the requirement of the law. The position of an incompetent matter before a court of law was clearly underscored in **MIC Tanzania Ltd v Minister for Labour**

**and Youth Development and Attorney General Civil Appeal No. 103/2004**, (CAT At SDM) where it was held:

*The nothingness of incompetent proceedings was underscored by this Court in the case LEONSI SILAYO NGALAI V HON. JUSTINE ALFRED SALAKAMA AND THE ATTORNEY GENERAL, CIVIL APPEAL NO 38 OF 1996 (unreported) This court said:*

*... The second aspect is whether this Court may adjourn an appeal which is incompetent, in order to allow the appellant to take necessary steps to cure the incompetency. This court has said it before that **an incompetent appeal amounts to no appeal**. It follows therefore that the court cannot adjourn what it does not have. Under such circumstances, what the court does is to strike the purported appeal off the register (emphasis is ours).*

That is in the court record, does not bear the appellant in her claim that her appeal was lodged after judgment of the District Court was delivered. In the circumstances, I rule that the appeal is incompetent before this court. Since this appeal is incompetent before the court, I have nothing but to strike it off the court's register.

It is so ordered

**DATED** at **SUMBAWANGA** this 14<sup>th</sup> day of March, 2022.



J. F. NKWABI

**JUDGE**