

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
SONGEA DISTRICT REGISTRY
AT SONGEA

CRIMINAL APPEAL NO. 29 OF 2021

(Originating from Criminal Case No. 09 of 2021 Namtumbo District Court at Namtumbo)

ALLY SAID SANGUAPPELLANT

VERSUS

THE REPUBLICRESPONDENT

RULING

Date of last order: 30/03/2022

Date of Ruling: 30/03/2022

MLYAMBINA, J.

When the Appeal came for hearing on 30th March, 2022, learned Senior State Attorney Ms. Shose Naimani for the Respondent raised a preliminary legal point of objection that the appeal before the Court is incompetent on the ground that the Notice of Appeal was filed out of time. Ms. Shose called upon the Court to struck out the appeal for being improper before the Court.

It was Ms. Shose contention that the impugned decision was pronounced on 4th day of August, 2021 but the Notice of Appeal was lodged on 6th day of December, 2021 and the Appeal was lodged on 23rd day of December, 2021 which is beyond the 10 days mandatory Notice required under *Section 361 (1) (a) of the Criminal Procedure Act, Cap 20 [R.E. 2019]*.

In response, it was conceded by the Appellant that the Appeal was lodged out of time as the mandatory Notice of Appeal which initiates the Appeal was filed out of time. The Appellant conceded that he did not apply for extension of time to file the Notice of Appeal and the Appeal itself out of time. The only given reason by the Appellant was that he got the copy of decision late.

As conceded, the Appellant never lodged on time the Notice of Appeal which initiates the appeal. The records clearly show that the impugned judgement was pronounced on 4th day of August, 2021 but the Notice of Appeal was lodged on 6th day of December, 2021 and the Appeal was lodged on 23rd day of December, 2021. *Section 361 (1) (a) of the Criminal Procedure Act, Cap 20 [R.E. 2019]* mandatory requires the Notice of Appeal be lodged within ten days and the Appeal within forty five days from the date of the impugned decision. *Section 361 (1) (a) and (b) (supra)* provides:

- (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) *Has given notice of his intention to appeal within ten days from the date of the finding, sentence or, in the case of a sentence of corporal punishment only, within three days of the date of such sentence; and*
 - (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, judgement or order appealed against shall be excluded.*

From the foregoing, it is evident under the provisions of *Section 361 (1) (a) (supra)*, that any appeal to the Court is preceded by a mandatory Notice of Appeal which has to be filed within 10 days from the date of the impugned conviction or sentence, or in the case of a sentence of corporal

punishment only, within three days of the date of such sentence. The later sentence does not cover the Appellant herein.

Since the Appellant did not lodge the mandatory Notice of Appeal within ten (10) days as required by the law, the remedy thereof is to struck out the Notice of Appeal and the Petition of Appeal for being incompetent before the Court. If the Appellant is still interested and have good ground, he can apply for extension of time to file Notice of Appeal and Appeal out of time.

In the end, the Appeal is hereby marked struck out of the record for contravening the provisions of *Section 361 (1) (a) of the Criminal Procedure Act, Cap 20 (R.E. 2019)*. Order accordingly.



Y. J. MLYAMBINA
JUDGE

30/03/2022

Ruling delivered instantly and dated 30th day of March, 2022 in the presence of the Appellant in person and in the presence of learned Senior State Attorney Ms. Shose Naimani for the Respondent.



Y. J. MLYAMBINA
JUDGE

30/03/2022