

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MANYARA SUB REGISTRY

AT MANYARA

CRIMINAL APPEAL NO. 16 OF 2023

(Originating from Criminal Case No. 194 of 2020 from Babati District Court)

JACKSON JUMA.....APPELLANT

V

REPUBLIC.....RESPONDENT

RULING

20th March, 2023 and 20th March, 2023

BARTHY, J.

The above-named appellant was arraigned before Babati District Court with one count of armed robbery contrary to section 287A of Penal Code [Cap 16 R.E. 2019], vide criminal case No 194 of 2020. The offence which he not pleaded not guilty.

The trial court heard the case and sentenced the appellant to serve thirty years jail term. The sentence, did not amuse the appellant. However, he could not file his appeal within time.

The appellant therefore filed criminal application No. 2 of 2022 before the High Court of Arusha, seeking to be granted an extension of time to

file his appeal out of time. The application was heard and the appellant was granted the extension of thirty days to file his appeal from 18/5/2022 the date of ruling.

Hence this appeal before this court, where the appellant had advanced seven grounds of appeal.

On the date fixed for hearing the appellant appeared in person, whereas the respondent was represented with Ms. Blandina Msawa the state attorney.

In the course of hearing Ms. Msawa raised the preliminary objection that this appeal is time barred contrary to requirement of section 361 of the Criminal Procedure Act [Cap 20 R.E. 2022] (hereafter to be referred to as CPA) which requires the appeal to be lodged within 45 days from the date of decision or the supply of the copies of the proceedings.

She went on to argue that the appellant was granted the extension of 30 days from the ruling of the high court of arusha dated 18/5/2022 before Justice Kamuzora vide Criminal Application No. 2 of 2022. She firm argued that, this appeal is incompetent before this court and ought to be struck out.

The appellant responding to the argument he claimed his petition was submitted to the prison authority within time, but since he was in prison, he was not aware it was filed out of time.

The court having heard the parties' urgings, it is now tasked to determine whether the appeal is competent before this court.

To determine the same, the records of the trial court clearly show that the decision of the trial court was delivered on 25/3/2021 and the copy of the same was issued on 5/5/2021. However, the copy of the judgment and proceedings of the trial court were transmitted to the prison on 17/6/2021 and 28/8/2021 respectively.

The appellant filed the application to be granted the extension of time to file his appeal out of time which was granted by the high court of Arusha on 18/5/2022 vide Criminal Application No. 2 of 2022. The applicant was granted the extension of 30 days from the ruling of the court, which was to end on 17/6/2022.

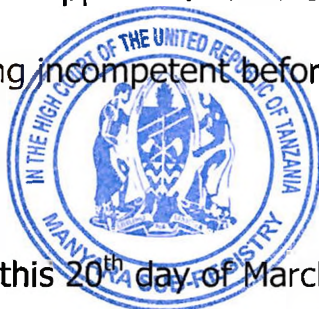
The petition of appeal shows that, the date presented for filing this appeal from prison was on 24/2/2022. However, the date of forwarding the appeal from the prison was on 15/6/2022 which is contradicting. On the other hand, the petition of appeal shows that it was admitted online and physically before this court on 6/2/2023 with the stamp of the court.

The title and dates in this appeal leaves a lot to be desired, as the title of this appeal indicated the petition of appeal was lodged in the high court of Manyara at Babati on those dates of 6/2 and 15/6/2022. However, the registry of Manyara high court at Babati started its operations on November 2022 by Government Notes No 611 of 2022 published on 28/10/2022. Therefore, the dates which show that it was presented for filing cannot be correct or true.

Considering the law clearly requires the appeal to be lodged within 45 days as provided under s. 361 of the CPA or upon leave by the court granting the extension of time to file the said appeal out of time. The appellant was granted the extension of thirty days which had lapsed for almost 7 months.

Being it clear that this appeal was filed out of time, the only remedy is to struck it out for being incompetent before this court.

Order accordingly.



DATED at Babati this 20th day of March, 2023.

G.N. BARTHY
JUDGE
20/3/2023

Judgment delivered in the presence of the appellant and Ms. Blandina Msawa the learned state attorney for the respondent.