

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE SUB-REGISTRY OF MANYARA**

AT BABATI

CRIMINAL APPEAL NO. 17 OF 2023

(Originating from the Criminal Case No. 97 of 2021 of the District Court of Kiteto at Kibaya)

MOHAMED JUMANNE APPELLANT

Versus

THE REPUBLIC RESPONDENT

RULING

24th & 31ST May 2023

Kahyoza, J.:

Mohamed Jumanne (the appellant) was convicted for raping a girl below the age of 18 years and sentenced him to serve 30 years in prison on the 29.01.2020. Unfortunately, he delayed to appeal. Desirous to appeal he lodges an application for extension of time to appeal out of time. This Court (Mwaseba, J.) granted the application awarding the appellant 30 days within which to lodge his appeal.

The ruling is dated 17th day of May, 2022. The record shows that the appellant submitted his appeal to Manyara sub-registry of the High Court on the 6.2.2023. On the date fixed for hearing but before this sub-registry received the record of appeal, Mr. Bizimana, the learned state Attorney raised a preliminary objection that the appeal was filed out of time.

He submitted in support of the preliminary objection that the appellant lodged the appeal after 8 months from the date he was granted extension of time to appeal. He submitted that the appellant was granted 30 days within which to appeal from the date of the ruling. He added that the ruling extending time was delivered on 17.5.2022 and the appellant given 30 days within which to appeal. He submitted that time expired on 17.6.2022. Citing the case of **Emmanuel Joseph v.R**, Criminal Appeal No. 32 of 2023 HC Manyara sub-registry, he submitted that an appeal filed out of time must be dismissed.

The appellant had nothing substantive to reply, he argued that he was a prisoner and that he appealed on time by submitting his ground of appeal to the prison administration. Thus, he did not know what happened leading to his appeal being lodged out of time.

Undisputedly, the appellant was required to lodge his appeal within 30 days from the date of delivery of the ruling granting him leave to appeal out of time. The ruling granting the appellant leave to appeal out of time is dated 17. 5. 2022. The date of delivery of the ruling is not indicate nor did the appellant state the date when the ruling was delivered. I take it that the ruling was delivered on the date this Court signed it. Hence, the appellant was required to appeal any time before 17.6.2022.

The appellant lodged his appeal to Manyara High Court sub-registry on 6.2.2023. It is self-evident that he instituted his appeal out of time allowed. Hence, the appellant's appeal is time barred.

Reading the petition of appeal, it is obvious that the appellant signed the memorandum of appeal on the 14.6. 2022. It may be argued that the appellant's appeal was lodged on time as he timely submitted the documents to the prison administration. I am baffled as to why did the prison authority delay for 8 months to await the establishment of Manyara High Court sub-registry so as to file the appeal. Manyara High Court sub-registry came into existence on 30.10.2022. The prison did not have an opportunity to state why did it take 8 months to file the documents from Arusha prison to Arusha High Court sub-registry. I am not able to buy the appellant's explanation that the prison delayed to lodge his appeal which he signed on 14.6.2022 for eight months.

In the end, I uphold the preliminary objection that the appeal was lodged out of time. The Respondent's state Attorney prayed the appeal to be dismissed. He cited the decision of this Court to support his prayer. I am reluctant to dismiss the appeal. The Court of Appeal criticized the decision of this Court which dismissed an appealed lodged out of time. It was of the firm view section 361(2) of the Criminal Procedure Act, [Cap. 20 R.E. 2022]

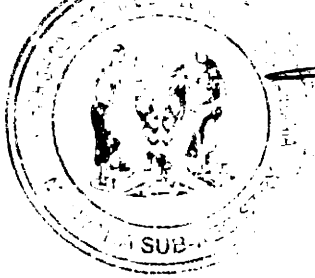
does not provide for dismissal of appeal filed out of time. It (the Court of Appeal) observed in **Said Shaibu Mwigambo vs Republic** (Criminal Appeal 420 of 2021) [2023] TZCA 148 (28 March 2023) that-

*"We agree with the learned State Attorney that all being equal, the delayed filing of the petition of appeal had the effect of rendering the appeal incompetent. The court was barred from entertaining an incompetent appeal for, it was as good as none had been instituted in the first place. The court could only make an order **striking it out instead of dismissing as it did...**"*

I strike out the appeal for being time barred.

It is ordered accordingly.

Dated at Babati this 31st day of May, 2023.



A handwritten signature in black ink, appearing to read "John R. Kahyoza", is written over a horizontal line.

John R. Kahyoza.

Judge

Court: Ruling delivered in the presence of the appellant and Mr. Bizimana State Attorney assisted by Ms. Ester Malima- State Attorney for the Republic.

Ms Fatina (RMA) is present.

A handwritten signature in black ink, appearing to read "John R. Kahyoza", is written over a horizontal line.

John R. Kahyoza, J.

31/05/2023