

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

CRIMINAL APPEAL NO. 18 OF 2023

(Originating from the Criminal Case No. 85 of 2019 of the District Court of Mbulu)

PETRO SAFARI 1ST APPELLANT
FRANK PETRO @KALASONGO 2ND APPELLANT

Versus

THE REPUBLIC RESPONDENT

RULING

24th & 31ST May 2023

Kahyoza, J.:

Petro Safari and **Frank Petro @Kalasongo** (the appellants) were charged with the offence of armed robbery. Upon conviction, the trial court sentenced them to serve 30 years in prison authority on the 19.05.2020. For reasons not relevant before this Court, the appellants delayed to appeal. They applied for leave to appeal out of time. This Court (Kamuzora, J.) granted the application for extension of time ordering the appellants to lodge their appeal within 30 days. The attached ruling does not indicate the date

the ruling was delivered. It seems the relevant page was omitted from the attached copy of the ruling.

The appellant lodged the petition of appeal before Manyara sub-registry of the High Court on the 6.2.2023. On the date the appellants' appeal came for hearing, before this sub-registry received the record of appeal, Ms. Blandina, learned state attorney prayed to raise preliminary objection. She argued that the appeal was filed out of time.

Ms. Blandina argued in support of the preliminary objection that the appellants filed a notice of appeal on 1.8. 2022 at Mbulu district and lodged on 6.2.2023. She argued that given the ruling giving leave to the appellants to appeal out of time, it was obvious that the appeal was lodged out of time allowed. he submitted that an appeal filed out of time must be dismissed.

The appellants did not contest that the appeal was out of time but they argued that they submitted the appeal on time to the prison authority. If the appeal was lodged out of time, it is upon the prison authority to explain. The second appellant added that he made follow up and the prison authority informed him that the appeal had already been filed.

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 appellants leave to appeal out of time is dated 18. 5. 2022. The record is silent as to the date the ruling was delivered. To my dismay, the record shows that the appellants lodged a notice of appeal on 1.8.2022 while he signed the petition of appeal on 14.6.2022 and same was forwarded by the prison authority to the Court on 16.6.2022. It is self-evident that while the petition of appeal was forwarded by the prison authority on 16.6.2022 before this Manyara High Court sub-registry, it reached Manyara High Court sub-registry on 6.2.2023. The petition reached Manyara High Court sub-registry five months after its birth.

It is very likely that the appellants are trying to take advantage of the new sub-registry of the High Court to institute two criminal appeals to two different sub-registries of the High Court. Why did the appellants lodge a petition of appeal before lodging a notice of appeal? Why did their appeal take 8 months to reach this Court which is allocated 200 Km away from Arusha prison? Why did they not submit the appeal to Arusha High Court sub-registry which gave them leave to appeal out time and wait for 8 months

for the establishment of Manyara High Court sub-registry, to lodge their appeal. There is much to be desired. It cannot be taken for granted that the appellants are innocent.

It is beyond dispute that the instant appeal was lodged beyond 30 days as ordered by this Court. Time within which to lodge an appeal was extended on 18.5.2022 and the appeal lodged on 6.2.2023. It is self-evident that the appellants instituted the appeal out of time allowed. Hence, the appellants' appeal is time barred.

The prison authority and the appellants know why it took 8 months to appeal. I hope the prison authority and the appellants will account for 8 months' delay, should the appellants institute an application for extension of time.

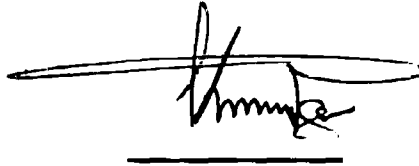
In the end, I uphold the preliminary objection that the appeal was lodged out of time. I struck out the appeal as the Court of Appeal observed in **Said Shaibu Mwigambo vs Republic** (Criminal Appeal 420 of 2021) [2023] TZCA 148 (28 March 2023) that section 361(2) of the Criminal Procedure Act, [Cap. 20 R.E. 2022] does not provide for dismissal of appeal filed out of time. It observed -

*"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.

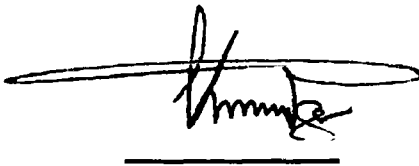


John.R.Kahyoza.

Judge

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

Ms Fatina (RMA) is present.



John.R.Kahyoza.

Judge

31/05/2023