

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE SUB- REGISTRY OF MANYARA

AT BABATI

CRIMINAL APPEAL No. 33 OF 2023

(Originating from Criminal Case No. 30 of 2020 from District Court of Mbulu at
Mbulu)

PAULO BOAY.....APPELLANT

VERSUS

REPUBLICRESPONDENT

RULING

Date:1/6/2023

BARTHY, J.

The above-named appellant had brought this appeal seeking to challenge the decision of Mbulu district court delivered on 26/5/2021; whose decision had convicted and sentenced the appellant to thirty years jail term and compensation of Tsh. 3,000,000/- for the first count of rape and the sentence of twelve months jail term for the second count of grievous bodily harm.



Aggrieved with the sentence and conviction of the trial court, the appellant is now before this court advancing the 7 grounds of appeal which for the purpose of this ruling, I will not reproduce them here.

On the date of hearing, the appellant appeared in person whereas the respondent was represented by Ms. Blandina Msawa the learned state attorney.

On the date fixed for hearing, before the hearing had commenced; Ms. Blandina Msawa informed the court that she had the issue that requires the determination of this court as the appeal is time barred. The parties were invited to address the court on the matter.

Ms. Msawa on her submission in chief she argued that the records of the trial court delivered its decision on 26/5/2021 and the appellant filed his notice of intention to appeal on 3/6/2021.

She went on to state that the records also show that, the appellant had lodged Miscellaneous Criminal Application No. 56 of 2022 before the High Court Arusha registry where on 14/12/2022 it had granted the appellant the extension of 14 days to file his appeal out of time.

However, the appellant had lodged this appeal online on 6/2/2023 and physical admission was done on 13/4/2023. It was Ms. Msawa's



submission that the appellant did not comply with the order of the High Court with regard to the time extended.

She argued that, the provision of section 361 of the Criminal Proceedings Act, Cap 20 R. E. 2022 sets time limit to file an appeal and its non-compliance was said to make this appeal incompetent. Thus, Ms. Msawa prayed for this appeal to be dismissed for being incompetent.

The appellant on her reply submission he argued that, its true he was granted the extension of time with the High Court and by 16/12/2022 he had already tendered his petition with the prison admission office. He therefore, claimed to be surprised to find that his appeal was out of time and pleaded with this court to do justice.

Ms. Msawa on her rejoinder submission she maintained her arguments and prayers made in her submission in chief.

This court having heard the arguments of both sides, this court is now called to determine as to]whether or not this appeal has been filed out of time.

As the provision of section 361 of the Criminal Procedure Act [Cap 20 R.E. 2022] which requires the appeal to be filed within 45 days from the date the impugned decision was made.



The appellant being aware he was out of time he lodged his application for extension of time to file his appeal out of time vide Miscellaneous Criminal Application No. 56 of 2022, where the High Court extended the time for 14 days from 14/12/2022. Therefore, by 29/12/2022 the appellant was required to lodge his petition of appeal or else his appeal will be out of time.

The records of the trial court shows that the petition of appeal was filed online on 6/2/2023 and it was tendered at the admission office on 13/4/2023 which was more than 14 days from the date the extension of time was granted by this court.

The appellant claimed to have submitted his petition of appeal at the prison admission office on 16/12/2022. To his surprise the filing of his petition of appeal was filed out of time.

This is one of unfortunate account as often heard before this court that, the prisoners are not assisted to pursue their right to file their appeal or application while they are incarceration for the reasons best known to prison officers; who are entrusted to help the prisoners access the court timely, but they were left to find another way to reach to this court for admission of their cases.



Despite feeling remorse to the appellant, with the dates gathered from the records clearly shows that the appeal was filed out of time. In the case of **Mawazo Saliboko @Shagi and 15 other v. DPP**, Criminal Appeal No. 384 2017, CAT at Tabora (unreported) among other things it was held that the appeal must be filed within prescribed time, unless the leave has been granted to file the same out of time.

In the event, from the foregoing reasons I find that this appeal is hopeless incompetent for being filed out of time and the only remedy is to struck it out.

It is so ordered.

DATED at **Babati** this 1st of June, 2023.



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G.N. BARTHY
JUDGE

Delivered in the presence of the appellant in person and Ms. Blandina Msawa the learned state attorney for the respondent.