

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

THE SUB - REGISTRY OF MWANZA

AT MWANZA

CRIMINAL APPEAL NO. 32 OF 2023

(From Criminal Case No. 11 of 2022 of Resident Magistrates' Court of Mwanza)

DIANA EDWARD @BUNDALA@ZUMARIDI-----1ST APPELLANT

ISAKA MASHAKA MAFURU-----2ND APPELLANT

NEEMA JULIAN @NDALAWA-----3RD APPELLANT

SUZANA SIMON@ NDALAWA-----4TH APPELLANT

ANITHA YESAYA MWAMBORA-----5TH APPELLANT

VERSUS

REPUBLIC-----1ST RESPONDENT

AMOS ABDUL @KAILEMBO-----2ND RESPONDENT

ISAYS YUSUPH JOHN-----3RD RESPONDENT

GEORGE MALOJI @JOHN @DAUD S/O MALOJI-----4TH RESPONDENT

VERONICA EMMANUEL @MGAYA-----5TH RESPONDENT

RULING

July 27th & August 1st, 2023

Morris, J

Cross-referencing two or more statutes is frequently a tricky enterprise. It calls for a serene inventiveness to achieve coherent and just results. The present matter encompasses such an appraisal. The five appellants above stand aggrieved by the judgement of the Resident

Magistrates' Court of Mwanza (RM's court) in Criminal Case No. 11 of 2022 dated 25/01/2023. They have, thus, preferred this appeal. Before hearing of the appeal, it was observed by the Court that the Notice of Intention to Appeal by the Appellants was filed on the 6th day of February 2023. That is, the 13th day after delivery of the impugned judgment. The Court engaged parties on the question whether or not the subject Notice was filed within the statutory time. They preferred addressing the Court formally; hence this ruling.

Advocate Eric Mutta represented the appellants whereas Ms. Dorcas Akyoo, Mr. Adam Murusuli and Frank Nchanila, learned State Attorneys, represented the 1st respondent. The 2nd to 5th respondents were unrepresented by advocates. It was the submissions of Mr. Eric that, the notice was lodged by the appellants on 6/2/2023 following the subordinate court's decision (Hon. Ndyekobora, SRM) of 25/1/2023. He also argued that, according to section 361(1) of ***the Criminal Procedure Act***, Cap 20 R.E 2019 (CPA) a prospective appellant is enjoined by the law to lodge a notice of intention to appeal in 10 days. The wording is couched as "**within 10 days from the date of findings, sentence or order.**"

Further, it was argued that, pursuant to section 60 (1) (b) & (c) of ***the Interpretation of Laws Act***, Cap 1 R.E. 2020 (ILA); computation of time in the statute in line with the wordings stated above, the day of the decision is excluded. To Mr. Mutta, in this case, 25th January 2023 should thus be excluded. Consequently, the 10th day falls on Saturday 4th February, 2023. In line with the next day being Sunday, the notice was timely filed on 6th February 2023 which was the 1st immediate day of operations of the registry.

In reply Mr. Nchanila, submitted that the Notice was filed out of time. His arithmetic settled at 3rd February, 2023 as an expiry day. According to him, the subject Notice was filed on the 13th day after the decision. He cited section 60(1) of LIA and argued that the specified day in the order must be included.

It was his further contention that section 361(1) of ***Cap 20*** R.E. 2022 directs the notice of intention to appeal to be filed within 10 days. I was referred to the case of ***Raphael Chagula v DPP***, Criminal App. 307/2019 CoA (Mbeya -unreported) with the holding that failure to give the subject notice deprives the High Court mandate to entertain the

appeal. The learned State Attorney, hence, prayed for the appeal to be stuck out for being incompetent due to absence of notice.

On their part, the 2nd to 5th respondents had no issues with the time bar. They unanimously were of the view that the notice was filed on time. In his brief rejoinder, Mr. Mutta submitted that, the case cited by the 1st Respondent's counsel is distinguishable. He argued that it does not give the correct interpretation of the word "from" as used in the cited statutes in his main submissions. Instead, thereof, the case was concerned with the "absence" of notice of appeal.

I have keenly and dispassionately considered the parties' submissions. As it was correctly submitted for both the appellants and the 1st respondents, the timeframe for filing the notice is 10 days. That is in accordance with section 361 (1) (a) **of CPA**. Such time is to be calculated from the date of the finding, sentence or order. The only question which remains to be answered by the Court is when exactly those 10 days became exhausted.

According to Mr. Mutta, the first day (25.01.2023) is excluded in computation of time. To Mr. Nchanila, that day is included. In the interest of clarity, section 361 (1) (a) **of CPA** provides that;



"Subject to subsection (2), an appeal from any finding, sentence or order referred to in section 359 shall not 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 order** or, in the case of a sentence of corporal punishment only, within three days of the date of such sentence;"* (emphasis added).

Undisputedly, the impugned trial court's judgement was delivered of 25th January 2023. To appreciate whether such day is included or excluded, one needs to resort to the rules governing interpretation of laws and setting of time limits. According to section 19 of **the Law of Limitation Act**, Cap 89 R.E, 2019; in computing the time for proceedings, the day from which such period is to be computed is excluded. Further, section 60 (1) (b) of **LIA** provides;

"In computing time for the purposes of a written law-

(a) ----not applicable----;

*(b) where a period of time is expressed to be reckoned **from, or after, a specified day**, that day **shall not** be included in the period"*(bolding is rendered for emphasis).

In my view, 'a specified day' in the above provision implies the day of the decision. Blending such meaning to facts of this matter, therefore, it is vivid that the time set for notice under section 361(1) (a) of **CPA** is 'from the date of judgement'. Pursuant to section 60 (1) (b) of **LIA**, the date of judgement is literally excluded from computation of time. In this regard, I also seek comfort from **KEC International Limited v Azania Bank Limited**, Commercial Case No. 152 of 2015 (unreported).

Counting from 26th January 2023, the 10th day falls on 4th February 2023. Incidentally, such day was a Saturday. It is a cardinal principle of law that when the last day for filing the matter is a weekend or holiday, the court takes judicial notice and the due date shall be the 1st following working day. Section 19 (6) of the **Cap 89** R.E. 2019 provides as follows:

"Where the period of limitation prescribed for any proceeding expires on a day when the court in which such proceeding is to be instituted is closed, the proceeding may be instituted on the day on which the court reopens."

The foregoing position is echoed by section 60 (2) of **LIA**. See, also, the cases of **Backlays Bank (T) Ltd v Jacob Muro**, Civil Appeal No 357 of 2019; **Abraham Abraham Simama v Bahati Sanga**, Civil



Application No. 462/17 of 2020; and ***Makomolwa Matepeli Shila v Mwanahamisi Ally Nongwa***, Civil Application No. 327/17 of 2021 (all unreported)

Therefore, for the Notice herein was filed on Monday, 6th February 2023; which was the first working day, it goes without gainsaying that the same was filed timely. In the upshot, the appeal before me is competent. Eventually, it should proceed for determination on own merit.

It is so ordered.



C.K.K. Morris

Judge

August 1st, 2023

The ruling is delivered this 1st day of August 2023 in the presence of the 1st - 5th appellants and their advocate, Mr. Eric Mutta. Ms. Dorcas Akyoo (Senior State Attorney), Messrs. Adam Murusuli and Frank Nchanila, Learned State Attorneys are present for the 1st Respondent. The 2nd - 5th Respondents are also in attendance.



C.K.K. Morris

Judge

August 1st, 2023

