

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(DAR ES SALAAM DISTRICT REGISTRY)**

**AT DAR ES SALAAM**

**PC. CRIMINAL APPEAL NO.145 OF 2022**

*(Arising from Criminal Appeal No. 07 of 2022 Kinondoni District Court, Originating from  
Criminal Case No. 380 of 2022 Kimara Primary Court)*

**JOHN SHILINGA.....APPELLANT**

**VERSUS**

**SARAH NZOWA.....RESPONDENT**

**JUDGMENT**

**POMO; J**

The Appellant, JOHN SHILINGA, is not happy with the decision of Kinondoni District Court (the first appellate court) which was delivered on 2<sup>nd</sup> August, 2022 Hon. H.S. Msongo, SRM by enhancing sentence from that of serving twelve months community service entered by the Kimara Primary Court (the trial court) to seven years jail sentence

Briefly stated, on 2<sup>nd</sup> May, 2022 the appellant was arraigned before the trial court charged with the offence of stealing of forty (40) goats valued

Tshs 6,000,000/- which belongs to SARAH NZOWA the respondent. The Appellant denied the charge. In proving the offence, the Respondent fronted three witnesses whose evidence when was weighed against the appellant's evidence, the trial court found the appellant guilty of the offence and sentenced him to serve twelve months community service punishment. The trial court judgment was delivered on 22<sup>nd</sup> March, 2022

The judgment and sentence aggrieved the Respondent thus on 13<sup>th</sup> April, 2022 filed PC. Criminal Appeal No. 7 of 2022 before Kinondoni District Court. This appeal was heard and on 2<sup>nd</sup> August, 2022 judgment was delivered by enhancing sentence against the Appellant from that of community service to jail sentence of seven years. This decision aggrieved the Appellant hence this appeal raising seven grounds of appeal, to wit: -

- 1. That, the trial court erred in law and facts by convicting and sentencing the appellant without sufficient evidence proving an offence of stealing goats*
- 2. That, the District Court erred in law and facts by substituting the punishment of 12 months community service made by the trial court to 7 years imprisonment*
- 3. That, the District court erred in law and facts by using section 265 of the Penal Code in convicting and sentencing the Appellant*

- 4. That, the trial magistrate erred in facts for failure to evaluate the evidence adduced by the Appellant during the hearing*
- 5. That, the trial Magistrate erred in law and facts by convicting and sentence the Appellant while the Respondent failed to substantiate her evidence of stealing of 11 goats*
- 6. That, the Magistrate erred in facts for convicting and sentencing the Appellant while he was not a custodian of the said lost 11 goats*
- 7. That, the District Court erred in law and facts by convicting and sentencing the Appellant for offence of stealing while there is no any evidence which shows the Appellant store 11 goats*

On 15<sup>th</sup> May, 2023 when the Appeal was called on for hearing, the Appellant was present unrepresented while Mr. Vedastus Majura, learned advocate appeared for the Respondent. I order hearing be by way of written submissions. Both sides complied the schedule of filing their respective submissions.

In the course of responding to the Appellant's submission supporting the Appeal, Mr. Vedastus in his reply submission raised a pertinent issue against the Appeal to the effect that it is time barred in terms of section 25(1)(a) &(b); (3) and (4) of the Magistrates' Courts Act, [Cap. 11 R.E.2019].

His argument is that the Appellant filed the instant appeal out of time since thirty days of filing an appeal had already lapsed

In his rejoinder, the Appellant responded on this by arguing that the point of law relating to competence of the Appeal could have been raised by the Respondent as preliminary objection before scheduling appeal hearing by way of written submission. Nevertheless, the appellant is of the submission that while the district court judgement was delivered on 2<sup>nd</sup> August, 2022, he filed notice of appeal through officer-in-charge of Ukonga Central Prison which was received by the District Court of Kinondoni on 11<sup>th</sup> August, 2022 the notice which instituted an appeal within thirty days.

I will start with the jurisdiction issue raised to the effect that this appeal is time barred. On this, the Appellant is complaining that the issue wasn't raised before appeal hearing could be scheduled by way of written submission. In my considered view, the question of time barred appeal is a jurisdiction issue and the court can only be assured of its power to hear and determine the merits of the appeal or otherwise upon satisfying itself that the appeal is not time barred. At what time in point can such issue be raised then? In resolving this, I will seek guidance from the case of **Yazidi Kassim t/a Yazidi Auto Electrical Repairs versus The Hon. Attorney General,**

Civil Application No.354/04 of 2019 CAT at Bukoba (Unreported) at page 9, where the Court of Appeal stated thus: -

*"It is a long-established principle that **issues of jurisdiction may be raised at any time** thus, the parties have a duty, not only a right, to raise and address such issues at any time".*

In the manner alleged by the Respondent, was the instant appeal filed out of time? It is common ground that this matter originated from primary court, Kimara primary court, for that matter, as Criminal Case No. 380 of 2022. The law applicable on appeals originating from primary courts is section 25(1)(b) of the Magistrates' Courts Act, [Cap, 11 R.E. 2019] which provides for time within which an appeal is to be lodged from the Appellate District Court thus: -

**"S.25.- (1) Save as hereinafter provided-**

**(a) N/A**

*(b) in any other proceedings any party, if aggrieved by **the decision or order of a district court in the exercise of its appellate or revisional jurisdiction** may, **within thirty days after the date of the decision or order, appeal therefrom to the High Court;** and the High Court may extend the time for filing an appeal either before or after such period of thirty days has expired". End of quote*

It is the district court record that the impugned decision was delivered on 2<sup>nd</sup> August, 2022 Hon. H.S. Msongo, SRM and the appellant filed this appeal on 5<sup>th</sup> September, 2022. This means, the appeal was filed out of time by four days without the order of the court allowing him to lodge the same out of time. The appellant has advanced the argument that he lodged notice of appeal within ten (10) days from the date of impugned decision and the same instituted an appeal. With due respect to the Appellant, appeals in criminal matters originating from primary courts are regulated by **section 25 of the Magistrates' Courts Act, [Cap. 11 R.E. 2019]** (the MCA). Filing of notice of intention to appeal is not a legal requirement under the MCA and therefore the alleged notice couldn't institute an appeal. Therefore, as evidenced by the Appellant's petition of appeal lodged on 5<sup>th</sup> September, 2022, this appeal was filed beyond the prescribed thirty (30) days of the pronouncement of judgment by the appellate district court.

The next issue to be resolved is, what is the effect of an appeal filed out of time? In **Ichobe Kerongwe versus Masarange Moremi**, Civil Appeal No. 162 of 2016 CAT at Mwanza (Unreported) at page 7, the Court of Appeal had this to state: -

***"The effect of instituting an appeal out of the prescribed period of limitation is to render it incompetent, the consequence is that the same is liable to be struck out".***

Therefore, applying the above authority, I hereby uphold the Respondent's objection that this appeal was filed out of time hence incompetent before this court. Consequently, I hereby struck it out. Order accordingly

Right of Appeal explained

Dated at Dar es Salaam this 21<sup>st</sup> day of November, 2023



**MUSA K. POMO**

**JUDGE**

**21/11/2023**



**Court:** - Judgment delivered this 21/11/2023 in the presence of the Appellant only.

**Sgd: S. B. Fimbo**

**Deputy Registrar**

**21/11/2023**