

**IN THE COURT OF APPEAL OF TANZANIA
AT IRINGA**

(CORAM: RUTAKANGWA, J.A., KIMARO, J.A. And MANDIA, J.A.)

CRIMINAL APPEAL NO. 60 OF 2008

**JUMA MOHAMED APPELLANT
VERSUS
THE REPUBLIC RESPONDENT**

**(Appeal from the Judgment of the High Court of Tanzania
at Songea)**

(Kaganda, J.)

**dated the 12th day of March, 2007
in
(D.C) Criminal Appeal No. 5 of 2006**

RULING OF THE COURT

30th August & 2nd September, 2010

RUTAKANGWA, J.A:

The appellant was aggrieved by the decision of the High Court sitting at Songea, in (D.C.) Criminal Appeal No. 5 of 2006. The said judgment was delivered in March, 2007.

On 3rd April, 2007 the appellant duly lodged his notice of appeal which he had apparently signed on 19th March, 2007. Thereafter his

appeal was scheduled for hearing on 30th August, 2010. He lodged his memorandum of appeal on the morning of 30th August, 2010.

In this appeal the appellant appeared in person and was unrepresented. The respondent Republic was represented by Mr. Michael Luena, learned Senior State Attorney.

When the appeal was called on for hearing, Mr. Luena rose to submit on a point of preliminary objection, notice of which he had earlier on lodged. His submission was short but focused. He argued that in terms of Rule 61 (1) of the then Tanzania Court of Appeal Rules, 1979 (the Rules) it was the notice of appeal which instituted the appeal. He went on to submit that under the same Rule any person wishing to appeal to this Court against the decision of the High Court in a criminal cause had to lodge in triplicate a notice of appeal within fourteen days of the date of the impugned decision. In this particular case, he said, the appellant's notice of appeal, which ought to have been lodged by "18th of March, 2007" was lodged out of time. This made his notice of appeal invalid and the appeal before us incompetent, he stressed. He accordingly urged us to hold that

this appeal is incompetent and strike it out. He predicted his reckoning of the time span on 4th of March, 2007 as this is the date appearing on the judgment, in the record of appeal.

The appellant, being a lay person, had nothing useful to tell us to sustain his notice of appeal and therefore his appeal. All he said is that he gave his notice of appeal in time and being a prisoner, he could do nothing to hasten its lodging.

It was submitted before us by Mr. Luena that the judgment of the High Court was delivered on 4th March, 2007. Mr. Luena, as already shown, predicated this particular submission on the supplied record of appeal which was certified by the District Registrar, Songea as a true copy of the original. This record incorporates the impugned judgment by Kaganda, J. dated 4th March, 2007. The record does not plainly show when the said judgment was pronounced in court in terms of section 312 (1) of the Criminal Procedure Act, Cap 20. We were also confounded by our discovery that the 4th of March, 2007 was a Sunday and therefore not a

working day. Our Perusal of the original High Court record cleared the mystery.

The judgment of the High Court was actually delivered in open court in the presence of the appellant and one Sedekia, learned State Attorney, by Uzia, J. on behalf of Kaganda, J. (as she then was) on 12th March, 2007. The supplied **certified record** of appeal, therefore, had omitted the High Court proceedings of 6th December, 2006, before Mr. Mrango, D.R and the 12th of March, 2007. We strongly deprecate this remiss in one's duties as it might one day lead to inexcusable miscarriages of justice.

All the same, there is no gainsaying that the judgment of the High Court having been delivered on 12th March, 2007, the appellant ought to have lodged his notice of appeal by 26th March, 2007. He failed to do so. As the notice of appeal was not endorsed by the officer in-charge of Ukonga Prison in which he was being held, the appellant would not benefit from the provisions of Rule 68 (1) of the Rules. For this reason, we sustain the objection raised by Mr. Luena. We hold that the notice of appeal was lodged out of time.

For the foregoing reasons, we find this appeal to be incompetent for being based on an invalid notice of appeal. It is accordingly struck out as pressed by Mr. Luena.

DATED at IRINGA this 1st day of September , 2010.

E. M. K. RUTAKANGWA
JUSTICE OF APPEAL

N. P. KIMARO
JUSTICE OF APPEAL

W. S. MANDIA
JUSTICE OF APPEAL



I certify that this is a true copy of the original.

A handwritten signature in black ink, appearing to read "J. S. MGETTA".

J. S. MGETTA
DEPUTY REGISTRAR
COURT OF APPEAL