

TANZANIA / JUDGMENT

OMARY SHABAN Vs

COURT
TANZLIIDECIDED
29 July 2024

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IN THE HIGH COURT OF TANZANIA (DODOMA SUB REGISTRY) AT DODOMA DC CRIMINAL
APPEAL NO. 10980 OF 2024 (Arising from the decision of the District Court of Iramba at Kiomboi
dated 22/03/2022 in Criminal Case No. 63 of 2021 before Hon. S.W. Nindi, RM) OMARY
SHABANI..... APPELLANT Versus REPUBLIC
..... RESPONDENT

RULING

Date of last order: 29th July, 2024. Date of Ruling: 05th August, 2024. E.E. KAKOLAKI, J. Before the District Court of Iramba the appellant was charged with the offence of Incest by Male; contrary to sections 154(1)(b) and 131(1) of the Penal Code, [Cap. 16 R.E 2019], found guilty as charged, convicted and sentenced to twenty (20) years imprisonment in its decision handed down on 22nd March, 2022, allegedly for carnally known his own blood sister. Disgruntled and unable to lodge the appeal for being out of time prescribed for appealing, successfully applied for extension on time before this Court in Misc. Criminal Application No. 43 of 2022 when ordered to file his appeal within 45 days in its decision dated 10/02/2023. However, lucky was not on his side as when he filed the said appeal vide DC Criminal Appeal No. 27 of 2023, the same was found to be preferred outside 45 days extended to him in Misc. Criminal Application No. 43 of 2022, the result of which the appeal was struck out by this Court in its order of 31/07/2023. Undaunted he once again successfully 1 preferred another application for extension of time, this time in Misc. Criminal Application No. 66 of 2023 when ordered to file the Notice of Appeal within 10 days and the petition of appeal within 45 days from the date of ruling delivered on 28/02/2024. In compliance with the court's order the appellant filed the Notice of appeal on 29/02/2024 before the Iramba District Court while filing the petition of appeal on 23/04/2024, hence the present appeal which was scheduled for hearing on 29/07/2024. When parties appeared in Court for hearing of the appeal on the date scheduled Ms. Magreth Fyumagwa, learned State Attorney for the Respondent picked an objection against the same submitting that, the appeal is time barred as the petition of appeal was filed in court on 23/4/2024, 9 days passed the extended time of 45 days. She said, in its ruling of 28/02/2024 in Misc. Criminal Application No. 66 of 2023, this Court ordered the applicant to file the Notice of Appeal within 10 days and the petition of appeal within 45 of the ruling but to the contrary only the Notice of appeal was filed in time as the petition of appeal was filed on 23/04/2024, hence the appeal is incompetent. Reliance was made to the case of Matage Nyambega Vs. Rhobi Bageni, Civil Appeal no. 311 of 2021 (CAT) where it was held that,

failure to appeal within prescribed period of time renders the appeal incompetent. For that matter she prayed the Court to strike out the appeal for being incompetent. 2 On his side the appellant while conceding to have filed the petition of appeal outside the prescribed time limit of 45 days as ordered by this Court he prayed for the Court's mercy as the delay should not be associated to his negligence since he pursued the prison lawyer to prepare the petition of appeal for him timely but was asked to await for relevant supporting documents from Iramba District Court only to find his petition of appeal filed out of time. On being probed by the court as to how he managed to file the Notice appeal in a day at Iramba District, Singida Region while incarcerated at Isanga Prison Dodoma, the appellant confessed that, the same might have been prepared at Iramba prison and signed by unknown person to him as never signed it. In rejoinder Ms. Fyumagwa while reiterating her submission in chief observed with concern that, following appellant's concession that he never signed the Notice of appeal the same is invalid too hence the appeal is incompetent deserving to be struck out, the prayer which she maintained. Having considered both parties submissions and consulted the record on the chronological events following this appeal as alluded to above as well as the concession by the appellant on the filing of petition of appeal and issuance of Notice of appeal without his knowledge, it is now clear that, not only the petition of appeal was filed outside 45 days extended to the appellant in Misc. Criminal Application No. 66 of 2023 but also the Notice of appeal is invalid for not being issued and signed by him. The law is settled that, once the appeal is filed outside the prescribed period of time the same is rendered 3 incompetent. See the cases of Mary Agness Mpelumbe Vs. Shekah Nasser Hamad, Civil Appeal No. 136 of 2021 [2021] TZCA 667 (5 th November 2021) and Matage Nyambega (supra) Tanzlii. The raised preliminary objection by the respondent hold is therefore sustained as in the absence of Notice of Appeal properly issued by the appellant though filed in time and the petition of appeal filed outside 45 days extended to him the appeal is rendered incompetent. I accordingly struck it out for want of competence. It is so ordered. Dated at Dodoma this 05th August, 2024. E. E. KAKOLAKI JUGDE 05/08/2024. Court: The Ruling has been delivered at Dodoma today on 05 th day of August, 2024, in the presence of the appellant in person, Ms. Magreth Fyumagwa, State Attorney for the respondent and Ms. Veradina Matikila, Court clerk. Right of appeal explained. E. E. KAKOLAKI JUGDE 05/08/2024. 4

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