

20100514 TZCA Mwanza3

DECIDED
14 May 2010

„ . , ' ; 1 l : f IN THE COURT OF APPEAL OF TANZANIA ATMWANZA (CORAM: MSOFFE, J.A., MBAROUK. J.A, And BWANA., J.A.) CRIMJ,NAL APPEAL N0.79 OF 2006

1. SAMWELI PHILEMON L ! '
2. SOHELA FRANCIS f~ APPELLANTS I VERSUS ' THE
REPUBLIC*..... RESPONDENT (Appeal from the Ruling of the
High Court I of Tanzania at Mwanza) (Mlay, J.) dated the 25 th day of April, 2003 , in Misc
Criminal Application No. 144 of 2001 JUDGMENT OF THE COURT th 14TH & 14
May, 2010 BWANA, J.A.: I Initially the two appellants, Samwel Philemon and Sohela Francis,
filed appeals against the Ruling of the High Court of ' ' Tanzania at Mwanza (Mlay, J.) dated 25
th day of April, 2003. However . the said appeals were subsequently consolidated to Criminal
Appeal I No. 79 of 2006. When the said ~ppeal was called on for hearing I today, the court
was informed that the second appellant, Sohela I Francis, has since died. He died on 21st day
of October, 2003. A 1 burial certificate was produced in Court of proof :thereof. As a
consequence of that death, the second appellant's appeal was abated 1 ' in terms of Rule 78
(1) of the Court of Appeal Rules 2009 (the Rules). The first appellant proceeded with his
appeal:. However, the I I court, suo motu, brought to the notice of the parti,es certain legal I
short comings identified in the appeal. The first such shortcoming is I I I that the appellant
has not lodged a memorandum of appeal in respect of the Ruling of Mlay, J., a ruling which
is the I basis of this I I appeal. What is on the court record is a memora'ndum of appeal I
against the main case, - the decisions of the trial Primary Court and District Court's decision
on appeal. I The second difficulty noticed on the record is found in the I I Ruling of Mlay, J.
itself. At one part of the Ruling ,he acknowledged that there was sufficient cause for the
delay in :filing the appeal. ' I However, he then proceded to deny extension of time to file the
I I I appeal on the basis that the appellant had not: filed a notice of ! intention to appeal. 2
The other issue concerns whether the appellant fil~d his papers ' within the time Limits as
provided by the respective law~. ' ' ' We start by looking at the last point, that of ti:me
limitation. Under section 361 (1) (a) of the Criminal Procedure ~ct (the CPA), a notice of
intention of appeal has to be filed within 10: days from the ' date of judgment, sentence or
order. That should be followed by lodging a petition of appeal within 45 days from the date
of obtaining a copy of the proceedings, judgment or order appeal~d against. This ' ' seems
not to have been complied with although, ini our considered ' view, sufficient cause had

been shown by the appellant for the delay. Of special importance, however, is the: absence of the memorandum of appeal lodged in this Court against the decision of Mlay, J. What is before us, as stated earlier, is a memorandum of appeal against the decision of the trial court and the appellate District Court. In other words, this court was not properly moved to hear the appeal against that Ruling given by Mlay, J. Therefore this appeal was incompetently before us, in terms of Rule 72 (1) and (5) of the Civil Rules. As the effect of the foregoing is that the court may invoke its discretion or direct that it be set down for hearing. However, given the circumstances of this case, we are inclined to invoke the revisional powers of this court as provided under the Appellate Jurisdiction Act, 1979 as amended, and in the interests of substantive justice (R.2 of the Rules) and proceed to extend time to the appellant to file before the High court, a notice of his intention to appeal against the Ruling of Mlay, J. delivered on 25th day of April 2003. The said notice of intention to appeal be filed within ten (10) days from the date of delivery of this Ruling. DATED at MWANZA, this 14th day of May, 2010. J. H. MSOFFE JUSTICE OF APPEAL I M.S.MBAROUK I I JUSTICE OF APPEAL S. J. BWANA JUSTICE OF APPEAL d= I (J.ZGert'A) I\ DEPUTY REGISTRAR : I I 4

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