

THE COURT OF APPEAL OF TANZANIA AT DODOMA (CORAM: MSOFFE, J.A, RUTAKANGWA, J.A, BWANA, J.A) CRIMINAL APPEAL NO 182 OF 2006	NAADI BILALI... APPELLANT VERSUS THE REPUBLIC.. RESPONDENT (Criminal from the judgement of the High Court of Tanzania at Dodoma) Kaijage, J (DC) Criminal Appeal No.5 of 2003.	Where the notice of appeal to the Court is time bared. The Court is also strictly barred by Section 361(1)(a) of the CPA from entertaining it.
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**IN THE COURT OF APPEAL OF TANZANIA
AT DODOMA**

(CORAM: MSOFFE, J.A., RUTAKANGWA, J.A., And BWANA, J.A.)

CRIMINAL APPEAL NO. 182 OF 2006

**NAADI BILALI APPELLANT
VERSUS
THE REPUBLIC RESPONDENT**

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

(Kaijage, J.)

**dated the 14th day of March, 2006
in**

(DC) Criminal Appeal No. 5 of 2003

JUDGMENT OF THE COURT

12 October, 2009

RUTAKANGWA, J.A.

The appellant was dissatisfied with the judgment of the District Court of Kondoa, dated 17th October, 2002. The said court had convicted him as charged, of the offence of Armed Robbery. It had also sentenced him to thirty (30) years jail as a result. His appeal against conviction and sentence to the High Court at Dodoma was unsuccessful. Still believing to be innocent, he has come to this Court by way of this appeal.

When the appeal came up for hearing this morning, the appellant appeared in person, while the respondent Republic was represented by Mr. Patience Ntwina, learned Senior State Attorney.

When the appellant was reminded of his six grounds of appeal, he opted to say nothing in elaboration. He had no additional ground either.

When invited to address the Court in response to the said grounds of complaints, Mr. Ntwina was of the opinion that there was nothing he could respond on because this appeal is patently incompetent. In elaboration, Mr. Ntwina, argued that the impugned High Court judgment which gave rise to this appeal was a nullity. This is because the purported appeal to the High Court was not competently before it as the notice of appeal to it had been issued out of time. Since the judgment of the District Court was delivered on 17th October, 2002, he urged, and the notice of intention to appeal was given on 5th November, 2002, after expiry of the statutory period of 10 days, the purported appeal was out of time. He accordingly invited us to invoke our revisional powers and nullify the proceedings before the High Court. Consequently, he pressed, since this appeal will be left with no legal leg to stand on, it should be struck out.

On his part, the appellant maintained that he gave his notice of intention to appeal on 18/10/2002 and therefore, within the prescribed time.

The court records speak for themselves. That the District Court judgment was delivered on 17/10/2002, there is no dispute. In terms of section 361 (1) (a) of the Criminal Procedure Act, Cap. 20 R.E. 2002 (the CPA), the appellant was enjoined to give notice of his intention to appeal within 10 days from the date of the judgment. The most cogent evidence before us is the notice of appeal itself found at page 26 of the record of appeal. This shows that the appellant gave that notice on 5th November, 2002. This is confirmed by the appellant's own petition of appeal to the High Court. In view of this glaring evidence, we are constrained to agree with Mr. Ntwina that the appeal to the High Court was incompetent and the High Court was strictly barred by section 361 (1) (a) of the CPA from entertaining it.

Since the High Court was statutorily barred to entertain the appeal, it is our opinion that it assumed the jurisdiction which it did not have. This Court has jurisdiction to intervene in these proceedings to rectify this situation.

In view of the above, acting on the revisional powers conferred upon the Court by section 4 (2) of the Appellate Jurisdiction Act, Cap. 141 R.E. 2002, we hereby nullify, quash, and set aside the proceedings and judgment in Criminal Appeal No. 5 of 2003 of the High Court at Dodoma. As this appeal emanated from void proceedings, as correctly urged by Mr. Ntwina, it is left with no legal leg to stand on. It is accordingly held to be incompetent and is hereby struck out.

In fine, the appellant is at liberty to pursue his intended appeal to the High Court subject to the relevant law on limitation.

DATED at DODOMA this 12th day of October, 2009.

J. H. MSOFFE
JUSTICE OF APPEAL

E.M.K. RUTAKANGWA
JUSTICE OF APPEAL

S. J. BWANA
JUSTICE OF APPEAL

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

(Z. A. MARUMA)
DEPUTY REGISTRAR