

LEGAL PRINCIPAL DISCUSSED

Citation	Parties	Legal Principles Discussed
<p>IN THE COURT OF APPEAL OF TANZANIA AT DODOMA CRIMINAL APPEAL NO. 165 OF 2008.</p> <p>KILEO J.A, MASSATI J.A AND ORIYO,J.A</p>	<p>JACKSON MLEMETA,</p> <p>SOTOLANE MAUGWA, SEBALULA MAUGWA,</p> <p>AMOS MWARABU VS THE REPUBLIC</p> <p>(Appeal from the Decision of the Resident Magistrate's Court with Extended Jurisdiction at Dodoma, Mzuna,(PRM Ext. Jur)</p>	<p>1.Lack of notice of intention to appeal contravened the provisions of section 361 (1) of the Criminal Procedure Act.</p>

IN THE COURT OF APPEAL OF TANZANIA

AT DODOMA

(CORAM: KILEO, J.A., MASSATI J. A. AND ORIYO, J. A.)

CRIMINAL APPEAL NO 165 OF 2008

BETWEEN

JACKSON MLEMETA

SOTOKINE MAUGWA

SEBALULA MAUGWA

AMOS MWARABU

}APPELLANTS
AND

THE REPUBLIC.....RESPONDENT

(Appeal from the decision of the Resident Magistrate's Court
with Extended Jurisdiction
at Dodoma

[Mzuna, PRM Ext. Jur.]

dated 29th March, 2007

in

PRM Criminal Appeal No. 20 of 2006

RULING OF THE COURT

12th March & 18th March, 2010

KILEO, J. A.

The Appellants, Jackson Mlemeta, Sotokine Maugwa , Sebalula Maugwa and Amos Mwarabu were charged with and convicted of armed robbery contrary to section 285 and 286 of the Penal Code, Cap 16 in the District Court of Kongwa. They were sentenced to the mandatory sentence of 30 years imprisonment. Their

appeal to the High Court was transferred to a Resident Magistrate with Extended Jurisdiction (Mzuna, PRM as he then was) in terms of section 45 (2) of the Magistrates' Courts Act, Cap 11. Their appeal was dismissed, hence this appeal.

When their appeal was called on for hearing, Mr. Nchimbi, learned State Attorney appearing for the Respondent Republic raised a preliminary point of objection, Notice of which had been served upon the appellants earlier. The point of objection raised and argued by the learned State Attorney is to the effect that the appeal lacks a legal base for want of notices of intention to appeal to the High Court. He submitted that the lack of Notice of Intention to Appeal contravened the provisions of section 361 of the Criminal Procedure Act (CPA). This provision provides for limitation periods in processing criminal appeals from District and Resident Magistrates courts in the High Court. The provision states:

Section 361-(1) Subject to subsection (2), no appeal from any finding, sentence or order referred to in section 359 shall be entertained unless the appellant-

(a) has given notice of his intention to appeal within ten days from the date of the finding, sentence or order or, in the case of a sentence of corporal punishment only, within three days of the date of such sentence; and

(b) has lodged his petition of appeal within forty-five days from the date of the finding, sentence or order,

ave that in computing the period of forty-five days the time required for obtaining a copy of the proceedings, judgment or order appealed against shall be excluded.

(2) The High Court may, for good cause, admit an appeal notwithstanding that the period of limitation prescribed in this section has elapsed.

In his submission, Mr. Nchimbi observed that even the PRM with Extended Jurisdiction who heard the appeal noted the absence of the Notice of Intention to Appeal but nevertheless proceeded to hear the appeal. He submitted that once the learned PRM with Extended jurisdiction had realized that there was no Notice of Intention to Appeal he ought to have struck out the appeal. He urged us to find the proceedings before the PRM with Extended Jurisdiction a nullity and in the event strike out the appeal before us as it is based on proceedings which are a nullity.

The four appellants appeared before us in person. Each of them, in response to the submission of the learned State Attorney claimed that being under prison authority they had duly given their notices to the prison authorities and they are surprised that such notices could not be found in the court record. They showed to us a photocopy of notices of intention to appeal which is dated 6th July 2006.

The only matter for determination before us is whether the appeal in the High Court was filed in time. As stipulated in section 361(1) (a) of the CPA cited above, the appellants were required to give their notices of intention to appeal within 10 days of their conviction and sentence. We have thoroughly checked both the record in the Resident Magistrates' Court where the PRM with Extended Jurisdiction sat (PRM Cr. Appeal No.20 of 2006) as well as the record of the High

Court through which the matter was transferred to the RM's Court (DC. Cr. Appeal No. 88 of 2006). We have also scrutinized the trial court's record but we have been unable to trace any Notice of Intention to Appeal to the High Court. The appellants insisted that they gave their notices of intention to appeal to the prison officials and claimed that being under custody it was not their fault that the notices are nowhere to be seen. We do appreciate the fourth appellant's complaint that it is inconceivable that they would have slept on their rights, such a long prison term having been meted out against them. There is however, nothing that we can do at this stage. Indeed, once the PRM with Extended Jurisdiction had found that there was no notice of intention to appeal he should have found the appeals before him incompetent and should have struck the same out. We share the learned State Attorney's observation that may be the only course open for the appellants is to raise their complaint as a ground in an application for extension of time to file an appeal in the High Court.

In the result, we find that there is substance in the Notice of Preliminary Objection raised by the Respondent Republic. We find the appeal before us to lack legal basis as the appeal from which it emanates was itself a nullity. The Notice of Preliminary Objection is sustained. Consequently, the appeal by Jackson Mlemeta, Sotokine Maugwa, Sebalula Maugwa and Amos Mwarabu is struck out.

It is ordered accordingly