

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

(CORAM: MUNUO, J.A., KAJI, J.A., And KIMARO, J.A.)

CRIMINAL APPEAL NO. 107 OF 2006

**SOSPETER LULENGAAPPELLANT
VERSUS
THE REPUBLIC RESPONDENT**

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

(Mjasiri, J.)

**dated the 19th day of December, 2005
in
Misc. Criminal Application No. 21 of 2005**

JUDGMENT OF THE COURT

12 & 22 June 2007

MUNUO, J.A.:

In Miscellaneous Criminal Application No. 21 of 2005 in the High Court of Tanzania at Dodoma, Mjasiri, J. dismissed the appellant's application for extension of time to appeal against the decision of the trial court in Criminal Case No. 206 of 2003 in the District Court at Mpwapwa wherein the appellant was convicted of cattle theft c/s 265 and 268 of the Penal Code, Cap 16 R.E. 2002. Upon conviction, the appellant was sentenced to 5 years imprisonment. Aggrieved by the learned judge's refusal to extend



the period of appeal to the High Court, the appellant lodged this appeal.

In the Court below, the appellant deposed to an affidavit in which he stated at paragraph 2 that when he was admitted at Mpwapwa prison, he immediately expressed his intention to appeal against the decision of the trial court. That was on the 27th December, 2004. He deposed furthermore that apart from expressing his intention to appeal to the High Court, he also applied for copies of judgement and proceedings for appeal purposes pursuant to the provisions of Section 361 (a) of the Criminal Procedure Act, 1985 Cap 20 R.E. 2002. At paragraph 4 of his affidavit, the appellant stated that he was later transferred to Isanga Prison where he was served with the copy of judgement he had applied for appeal. It was then that the prison officer told him that a notice of appeal had not been lodged. By then 45 days for appeal had expired so he applied for extension of time in the High Court which application failed giving rise to this appeal. He blamed the

prison officer for delaying the notice of appeal. He reiterated the same in his grounds of appeal.

Mr. Tangoh, learned State Attorney, conceded to the appeal on the ground that the appellant fulfilled his obligation when he expressed his intention to appeal and there was nothing he could have done to cause the prison officer to transmit the Notice of Appeal to the High Court to lodge the appeal. He observed that the appellant complied with the provisions of Section 359 (1) of the Criminal Procedure Act, 1985 Cap 20 R.E. 2002 so the learned judge ought to have held that there was sufficient ground for extending the period of appeal.

It appears to us that the learned State Attorney rightly conceded to the appeal. Section 359 (1) of the Criminal Procedure Act, Cap 20 R.E. 2002 states inter-alia:-

359 (1) Save as herein provided any person
aggrieved by any finding, sentence or
order made or passed by a

subordinate court other than a subordinate court exercising its extended powers by virtue of an order made under section 173 of this Act may appeal to the High Court and the subordinate court shall at the time when such finding, sentence or order is made or passed, inform that person of the period of time which, if he wishes to appeal, he is required to give notice of his intention to appeal and lodge his petition of appeal.

(2) Any appeal to the High Court may be on a matter of fact as well as on a matter of law.

To exercise the right of appeal stipulated under the provisions of section 359 (1) and (2) of the Criminal Procedure Act, 1985 Cap 20 R.E. 2002, the appellant had to comply with the mandatory provisions of Section 361 of Cap 20 which state:-

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 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.

Save that in computing the period of forty five days the time required for obtaining a copy of the proceedings, judgement or order 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.

The learned judge found no good cause for extending the period of appeal. We respectfully fault this finding. One, paragraph 2 of the affidavit in support of the application clearly states that the appellant expressed his intention to appeal and also applied for copies of judgement and proceedings when he was admitted at Mpwapwa prison upon conviction and sentence. Second, having so expressed his intention to appeal, the appellant left the matter in the hands of the prison officer who was duty bound to transmit the Notice of Appeal to the High Court. The default of the prison officer to forward the Notice of Appeal to the High Court is sufficient ground for extending the period of appeal. Under the circumstances, we find merit in this appeal. We accordingly allow the appeal.

We order that the Notice of Appeal be lodged within ten days commencing today, and the memorandum of appeal be filed within forty five days from today.

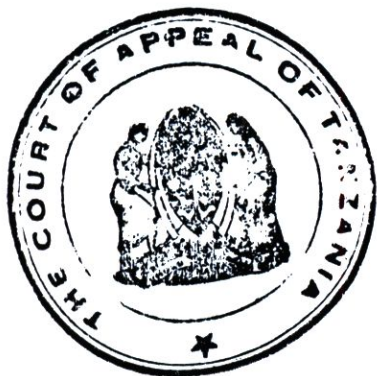
DATED at DODOMA this 22nd day of June, 2007.

E.N. MUNUO
JUSTICE OF APPEAL

S.N. KAJI
JUSTICE OF APPEAL

N.P. KIMARO
JUSTICE OF APPEAL

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



(S.M. RUMANYIKA)
DEPUTY REGISTRAR