

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF MUSOMA**

AT MUSOMA

CRIMINAL APPEAL NO. 39 OF 2021

DIRECTOR OF PUBLIC PROSECUTIONS APPELLANT

VERSUS

BARAKA VICENT @ MAGATI RESPONDENT

***(Arising from judgment of the Resident Magistrate's Court of
Musoma at Musoma in Criminal Case No. 119 of 2019)***

RULING

4th and 4th August, 2021

KISANYA, J.:

Aggrieved by the decision of the Resident Magistrate's Court of Musoma at Musoma in Criminal Case No. 119 of 2019, the Director of Public Prosecutions (DPP) has appealed to this Court. The judgment subject to this appeal was delivered on 27th October, 2020. In terms of that judgment, the respondent was acquitted of the offences of rape contrary to section 130(1), (2) (e) and 131 of the Penal Code, Cap 16, R.E. 2019 and unnatural offence contrary to section 154(1)(a) and (2) of the Penal Code (supra).

When this appeal came up for hearing today, the appellant was represented by Mr. Tawabu Yahya, learned State Attorney and the respondent failed to appear because he was not served.

At the outset, I asked Mr. Tawabu on whether the appeal was timeous. The learned State Attorney readily conceded that the appeal was lodged out of time. He admitted that the copies of judgment and proceedings were served to the appellant on 10th February, 2021 and the petition of lodged on 9th April, 2021. That said, the learned State Attorney asked me to strike out the appeal.

On my part, the law on time limitation is based on the legal maxim that the interest of the state is that the litigation should come to an end. This position was stated in **Barclays Bank Tanzania Limited vs Phylisiah Hussein Mchini**, Civil Appeal No. 19 of 2016 (unreported). Therefore, parties are duty bound to exercise their right within the time specified by the law. If parties do not observe the time limitation, the objective of enacting the provisions on time limitation will not be met.

As far as appeals by the Director of Public Prosecutions (DPP) are concerned, the time which to appeal against the decision or order of the Court of Resident Magistrate or District Court is provided for under section

379 (1) of the Criminal Procedure Act [Cap. 20, R.E. 2019](the CPA). Apart from lodging the notice of intention of appeal within thirty (30) days of the impugned decision, the DPP is required to lodge his petition of appeal within forty five (45) days from the date of decision subject to appeal. However, the time requisite for obtaining a copy of the proceedings, judgment or order appealed against is excluded in computing the time limitation.

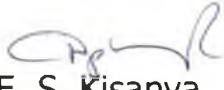
In our case, it is on record that the copies of proceedings were served to the appellant through the National Prosecution Services, Mara Region on 10th February, 2021. Therefore, in view of section 379(1)(b) of the CPA, the DPP ought to have lodged his petition of appeal on or before 27th March, 2021. Mr. Tawabu admitted that the petition of appeal was lodged on 9th April, 2021. The date stated by the learned State Attorney appears in the Judiciary System (JSDS). On the other hand, the hard copy of the petition shows that the petition was received at this Court on 1st April, 2021. All in all, whether the petition of appeal was filed on 1st April, 2021 or 9th April, 2021, the present appeal is time barred, a fact which is not disputed by the learned State Attorney.

With regard to the way forward, Mr. Tawabu asked me strike out the appeal. Pursuant to section 3(1) of the Law of Limitation Act [Cap. 89, R.E. 2002] and the decision of the Court of Appeal in **Barclays Bank Tanzania Limited vs Phylisiah Hussein Mchini** (supra), the remedy in respect of a matter lodged out of time is to dismiss it.

In the upshot and for the reasons stated herein, I dismiss this appeal.

DATED at MUSOMA this 4th day of August, 2021.




E. S. Kisanya
JUDGE

Court: Ruling delivered this 4th day of August, 2021 in the presence of Mr. Tawabu Yahya, learned State Attorney and in the absence of the respondent. BC Simon present.




E. S. Kisanya
JUDGE
04.08.2021