

THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

THE DISTRICT REGISTRY OF MBEYA

AT MBEYA

CRIMINAL APPEAL NO. 123 OF 2020

*(From the District Court of Mbozi District, at Vwawa,
in Criminal Case No. 57 of 2018).*

- 1. LAZARO S/O VENANCE SINKABA.....1ST APPLICANT**
- 2. IBRAHIM S/O ANYAWILE KIBONA.....2ND APPLICANT**
- 3. AMBOKILE S/O LUCAS KABUKA.....3RD APPLICANT**

VERSUS

THE REPUBLIC.....RESPONDENT

RULING

04. 05 & 24. 08. 2021.

Utamwa, J:

This is a ruling on a preliminary objection (the PO) raised by the respondent against this first appeal filed by the appellants, LAZARO S/O VENANCE SINKABA, IBRAHIM S/O ANYAWILE KIBONA and AMBOKILE S/O LUCAS KABUKA (henceforth the first, second and third applicant respectively). In this appeal, the appellants challenge the judgment dated the 5th September, 2019 (impugned judgment) of the District Court of

Mbozi District, at Vwawa (the trial court), in Criminal Case No. 57 of 2018. The impugned judgment followed a full trial in which the trial court convicted the appellants of some offences including armed robbery contrary to section 287A of the Penal Code, Cap. 16 and sentenced them to serve some terms in prison.

Before the appeal was heard, Ms. Prosista Paul, learned State Attorney for the respondent/Republic orally raised the PO mentioned above on a single legal point. She contended that, the three appellants filed their petition of appeal regarding the present appeal out of time. The impugned judgment was pronounced on the 5th September, 2019. However, they filed the petition of appeal on the 21st August, 2020 which was after a year from the date of the impugned judgment. Section 361 (b) of the Criminal Procedure Act, Cap. 20 R.E 2019 (hereinafter called the CPA) guides that, appeals of this nature have to be lodged within 45 days from the date of the judgment of the subordinate court appealed against. Nevertheless, in the appeal at hand the appellants did not firstly apply for and obtain extension of time to file the appeal belatedly. The learned State Attorney thus, urged this court to strike out the appeal.

In his oral replying submissions, the first appellant contended that, the appeal was filed timely because, the appellants received the copies of the judgment and proceedings on the 20th August, 2020 and the petition of appeal was sent to this court on the 21st August, 2020. The documents just mentioned above also indicate that, they were received on the said 20th August, 2020. In his turn, the second appellant concurred with the first respondent. He added that, even the documents at issue show\$ that they were certified as true copies of the original by the trial magistrate on

the 2nd August, 2020. On his part, the third appellant concurred with his colleague appellants without adding a word.

In her rejoinder submissions, the learned State Attorney for the respondent argued that, the copy of the proceedings shows that, the same was certified/prepared on the 2nd August, 2020 and 20th August, 2020. She thus, contended that, she was not sure if those were the true dates for preparing the documents since they were only copies.

Upon hearing the parties on the PO, the court reserved its ruling pending the availability of the original records of the trial court which were not available at the time when the parties argued the PO. This court thus, set the date for ruling when the trial court's original record was made available to it, hence this ruling.

I have considered the record of this appeal which includes the original record of the trial court, the brief arguments by the parties and the law. It is not disputed from the arguments by the parties and the record that the present appeal was, in fact, filed on the 21st August, 2020. This is also well testified by the rubber stamp of this court endorsed on top of the petition of appeal showing that, the same was actually received on that date. It is not thus, disputed that the appeal was filed after the expiry of 45 days from the date of the impugned judgement (i. e. 5th September, 2019). The parties are also not in squabble that, the law cited above requires appeals of this nature to be filed within 45 days from the date of the decision against which the appeal is preferred.

It is also clear that, the learned State Attorney for the respondent considers this appeal as time barred upon computing the 45 days from the exact date of the impugned judgment. The appellants disputes the

mode of computation for the time limitation adopted by the learned State Attorney. They want the court to compute the time limitation of the said 45 days from the date when they received the copies of the impugned judgment and proceedings of the trial court. It is therefore, vibrant that the friction between the parties is centred on the reckoning date of the time limitation of the said 45 days prescribed by the law.

Owing to the reasons shown above, the issue between the two sides of this matter has been reduced to this: when is the proper reckoning date in computing the time limitation under the circumstances of the matter at hand? The answer to this issue is readily available in our contemporary case law. The Court of Appeal of Tanzania (the CAT) for example, recently construed the provisions of section 361(b) of the CPA which is under discussion. It held that, in computing the 45 days, there must be an automatic exclusion of the time required for obtaining copies of the proceedings, judgment or order appealed against (henceforth the copies); see the cases of **The Director of Public Prosecutions (DPP) v. Mawazo Saliboko @ Shagi and others, Criminal Appeal No. 384 of 2017, CAT at Tabora** (unreported) and **Samuel Emmanuel Fulgence v. Republic, Criminal Appeal No. 4 of 2018, CAT, at Mtwara** (unreported) which followed the case of **Aidan Chale v. Republic, Criminal Appeal No. 130 of 2003 CAT at Mbeya** (Unreported).

There is however, a slight difference between the guidance made by the CAT in the **DPP v. Mwazo Saliboko case** (supra) and the **Samuel Emanuel Case** (supra), especially on the reckoning date in computing the time limitation of 45 days. On one hand, the former precedent guided that, the reckoning date is the date when the appellant

receives the copies. On the other hand, the latter precedent guided that, the reckoning date is the date when the trial court certifies the copies as true copies of the original, i.e. when the same are ready for collection.

In the matter at hand, the appellants contended that, they received the copies on the 20th August, 2020. The record also shows that, the copy of the impugned judgment was received in the Ruanda Prison (Mbeya) where the appellants were incarcerated for serving their sentence on the 20th August, 2020. This is vide the original rubber stamp of the prison endorsed and signed at the bottom of a copy of the impugned judgment. It is true however, that some copies in the trial court's record are doubtful as rightly argued by the learned State Attorney for the respondent. A copy of the typed proceedings of the trial court for instance, shows that, it was dated 02/01/2020 (by a pen). However, the purpose of endorsing this date is not clear from the record.

Now, due to the scenario demonstrated by the record, this court is of the view that, the benefit of the doubts should be given to the appellants. This is a settled and trite legal principle in dispensation of criminal justice. I thus, find that, the appellants received the copies of the judgment and proceedings of the trial court on the 20th August, 2020 as they submitted in court. It follows therefore that, this is the reckoning date for the time limitation of the 45 days prescribed by the law as per the **DPP v. Mwazo Saliboko case** (supra). This finding therefore, constitutes the answer to the issue posed above.

It follows thus, that, since the reckoning date for the computation of the time limitation was the 20th August, 2020, and since the appeal at hand was undisputedly filed in this court on the 21st August, 2020, the same was filed the next day of the reckoning date. This is upon

considering the automatic exclusion of the time necessary for obtaining the copies of the impugned judgement and proceedings as guided by the two precedents of the CAT cited above, which are binding to this court vide the doctrine of precedent (*stare decisis*). The appeal was therefore, timely filed.

Having observed as above, I hereby overrule the PO raised by the learned State Attorney for the respondent for want of merits. The appeal shall consequently, proceed to the hearing on merits. It is so ordered.




JHK. UTAMWA.

JUDGE.

01/08/2021.