

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(IN THE DISTRICT REGISTRY OF KIGOMA)**

**AT KIGOMA**

**APPELLATE JURISDICTION**

**(DC) CRIMINAL APPEAL NO. 42 OF 2021**

(Arising from Criminal Case No. 77 of 2020 of Kigoma District Court Before E.B. Mushi, RM)

**DIRECTOR OF PUBLIC PROSECUTION..... APPELLANT**

**VERSUS**

**BARAKA S/O DANIEL @ KENGE.....RESPONDENT**

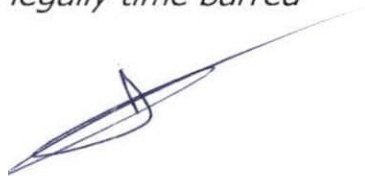
**R U L I N G**

29<sup>th</sup> & 29<sup>th</sup> October, 2021

**A. MATUMA J.**

When this appeal came for hearing, M/S. Joyce Godfrey, learned advocate who represented the Respondent rose to argue a preliminary objection against this appeal on two points;

- i. That the appeal is incompetent for having been filed without being accompanied by a copy of the proceedings interms of section 380 (1) of the Criminal Procedure Act.*
- ii. That the appeal is legally time barred*

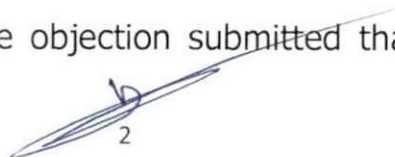


At the hearing of the objection, the learned advocate withdrew the first point of objection after some sort of discussions between the parties and the court. She argued the objection in relation to time limitation.

She submitted that the impugned judgment was delivered and supplied to the parties on the same very day of its delivery on the 07/05/2021 but this appeal was lodged in this court on 25/08/2021 which is a period of 108 days contrary to section 379 (1) of the Criminal Procedure Act, Cap. 20 R.E. 2019 which requires an appeal by the Director of Public Prosecutions to be filed within forty-five days from the date of the delivery of the impugned judgment.

The learned advocate cited to me the decision of my learned brethren Justice Utamwa in the case of ***Director of Public Prosecutions versus Obeid Nyoka @ Obeid Issa Nyoka @ Obeid Nyoka Poyongo Kavyega, Criminal Appeal no. 95 of 2016*** High Court at Tabora to the effect that the DPP so does the Accused persons have no automatic right to exclude the days requisite for obtaining the copies of the Proceedings and Judgment. They must apply to the court to have the time extended.

Mr. Shaban Juma Masanja learned State Attorney who represented the Appellant responding on the objection submitted that exclusion of the



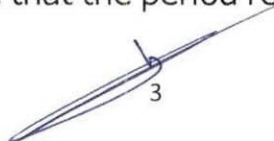
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period requisite for obtaining the copy of the judgment and proceedings is automatic though he could not recall a decided authority to that effect.

He further argued that although they received the copy of the judgment on the same day of its delivery i.e 07/05/2021, they were supplied the proceedings on the 19/07/2021 and that both the proceedings and the judgment were important documents for them to prepare the appeal. He counted the 45 days from 19/07/2021 when they received the proceedings to 25/08/2021 when they filed this appeal and find that the same was filed within time as the 45 days was to expire on the 01/09/2021.

When I probed him why didn't they collect the proceedings earlier than the said 19/07/2021 as the same are indicative that they were ready for collections on 21/05/2021, he quickly replied that they were not informed that the documents were ready.

Having heard both parties for and against the objection, it is undisputed fact that both parties were given the impugned judgment by the trial court on the same very day of its delivery i.e. 07/05/2021. Again, it is undisputed by both parties that the period available for appeal purposes by the Director of Public Prosecutions is only 45 days from the date of the impugned judgment, serve that the period requisite for obtaining the copy

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of the judgment and proceedings shall be excluded in computing the forty-five days. See section 379 (1) (b) of the CPA supra and the Court of Appeal decision in the case of ***Aidan Chale versus The Republic***, Criminal Appeal No. 130 of 2003 (CAT).

In that respect I don't agree with Joyce Godfrey that the exclusion of the days requisite for obtaining the copy of judgment and proceedings is not automatic. It is my firm view that the exclusion thereof is automatic on the strength of the decision in the case of ***the Registered Trustees of Marian Faith Healing Center @ Wanamaombi V. The Registered Trustees of the Catholic Church Sumbawanga Diocese***, Civil appeal no. 64 of 2007 which interpreted section 19 (2) of the Law of Limitation Act, Cap. 89 R.E. 2002 to mean there is automatic exclusion in the law. The said provisions have similar words to section 379 (1) (b) of the CPA supra. See also the case of ***Ramadhani Rajabu @ Athumani versus Regina Rusimbi***, DC Civil Appeal no. 18 of 2018, High Court at Tabora.

I called for and inspected the dispatch of the trial court in which I have seen that one Happiness Mayunga (State Attorney) was dispatched the Proceedings on the 19/07/2021 but those proceedings were in fact ready for collection on 21/05/2021 just two weeks after the delivery of the

impugned judgment. There is no explanation on record as to why the appellant delayed to collect the proceedings from 21/05/2021 when the same were ready for collection up to 19/07/2021 when she ultimately collected them. Mr. Masanja argued that they were not informed if the documents were ready. That submission is unfounded because such arguments at the hearing of this appeal is neither facts nor evidence. They are bare arguments without supportive facts or evidence on record and thus cannot be acted upon as it was held in the case of ***Morandi versus Petro [1980] TLR 49*** that;

*'Submissions made by a party to an appeal in support of the grounds of appeal, are not evidence but are arguments on the facts and law raised before the court. Such submissions are made without oath or affirmation, and a party making them is not subject to cross examination by his opponent'.*

In the circumstances, it is my firm finding that the period to be excluded in computing the 45 days ranges from the day in which the notice of appeal was lodged on 11/05/2021 to the day when the proceedings of the case were ready for collection i.e. 21/05/2021.

In the circumstances, the appellant should have advanced the grounds upon which she delayed to collect the proceedings which were ready for collection just two weeks after the delivery of the impugned judgment. A



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party should not sleep on his/her rights. He/she must be quick to pursue such rights and whenever problems arise in the due course, they must be evidenced on record so that at the hearing of the matter, the already facts on record are used to argue the encumbrances for the party to have acted within the prescribed time limit. In the instant matter from 21/05/2021 when the documents were ready for collection to 25/08/2021 when this appeal was filed it is over and above the 45 days prescribed under the law. Happiness Mayunga learned State Attorney did not file an affidavit to state when exactly she was informed that the proceedings were ready for collection and why she took the same on 19/07/2021 and not earlier than that. I thus find this appeal to have been filed out of time and I allow the objection. Consequently, this appeal is hereby struck out. Right of appeal explained.

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**A. Matuma**

**Judged**

**29/10/2021**

**Court:** Ruling delivered in the presence of Mr. Shaban Juma Masanja learned Senior State Attorney for the Appellant and in the presence of the Respondent in person. Right of Appeal explained.

**Sgd: A. Matuma**

**Judged**

**29/10/2021**