

**IN THE HIGH COURT OF TANZANIA  
(MTWARA DISTRICT REGISTRY)**

**AT MTWARA**

**CRIMINAL APPEAL NO. 74 OF 2020**

**(Arising from Nachingwea District Court Criminal Case No. 7 of 2019 before  
Hon. S.W. Mwalusamba, RM)**

**BASHIRU HASSAN MPOYO..... APPELLANT**

**VERSUS**

**THE REPUBLIC..... RESPONDENT**

**RULING**

13<sup>th</sup> & 20<sup>th</sup> October, 2021

**DYANSOBERA, J.:**

The appellant Bashiru Hassan Mpoyo and his fellow, Omary s/o Bakari @ Simtaji (2<sup>nd</sup> accused), were charged in the District Court of Nachingwea with being in possession of property suspected to be stolen or unlawfully acquired contrary to section 312 (1) (b) of the Penal Code [Cap. 16 R.E.2002]. While the 2<sup>nd</sup> accused was found not guilty and acquitted, the appellant was convicted and sentenced *in absentia* to serve five (5) years term prison term. He was dissatisfied with the trial court's decision and has appealed to this court. According to his petition of appeal filed on 21<sup>st</sup> day of April, 2020 five grounds of appeal were raised. However, on

19<sup>th</sup> day of May, 2021, the same appellant filed a total of seven (7) additional grounds of appeal.

On 13<sup>th</sup> day of September, 2021 when this appeal came up for hearing, Mr. Paul Kimweri, learned Senior State Attorney informed this court that he had noted a legal aspect on the competence of this court on entertaining this appeal. He pointed out that the appeal is time barred. Explaining on this aspect, Mr. Kimweri submitted that the record shows that the copy of the judgment was certified by the court hence ready for collection on 10<sup>th</sup> day of December, 2019 while the copy of proceedings were certified on 17<sup>th</sup> day of February, 2020 but the petition of appeal was filed and received by this court on 21<sup>st</sup> day of April, 2020. He said that counting from the date of certification of the copy of judgment that is on 10<sup>th</sup> day of December, 2019 to 21<sup>st</sup> day of April, 2020, there was a lapse of more than the prescribed period of forty five days. According to him, the appellant was duty bound, under Section 361 (1) (b) of the Criminal Procedure Act, to file his petition of appeal within forty five days from the date of the decision. He was of the view that the appeal is time barred.

As to the consequences, learned Senior State Attorney asked the court to invoke the provisions of section 3 (1) of the Law of Limitation Act [Cap. 89 R.E.2019] and dismiss the appeal.

The appellant, in response, told the court that when he was in prison, he filed a notice of appeal in time that is within ten days. He also filed his petition of appeal within forty five days. He was then told that there was a change of District Registrars and they were required to attach copies of

proceedings. So, they had to apply for those copies but again he was required to file a fresh notice of intention to appeal hence leading to the delay of filing the second petition of appeal.

There is no dispute that, according to the record, the impugned judgment was delivered on 21.6.2019 and certified on 10.12.2019 while the proceedings were certified on 17.2.2020. The appellant's notice of intention to appeal was filed at the trial court on 22.10.2019 and this is clear from the Court Seal of the District Court at Nachingwea. However, it is not until on 21<sup>st</sup> day of April, 2020 when the appellant filed his petition of appeal. This means that the appeal was filed beyond the forty five period prescribed by law. Section 361 (1) (b) of the Criminal Procedure Act provides thus:-

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)....(not relevant)

(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, 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.

Under these provisions, this court is barred from entertaining the appeal where the period of limitation has elapsed, unless for good cause, the court admits it but even then there must an application for extension of time.

I agree to the learned Senior State Attorney's argument that the court cannot entertain this appeal which is barred by limitation.

Consequently, invoking the provisions of section 3 (1) of the Law of Limitation Act [CAP.89.R.E.2019], I dismiss this appeal on the basis that it is time barred.

Order accordingly.



A handwritten signature in blue ink, appearing to read "W.P. Dyansobera".

**W. P. Dyansobera**

**Judge**

**20.10.2021**

This ruling is delivered under my hand and the seal of this Court on this 20<sup>th</sup> day of October, 2021 in the presence of the appellant and Mr. Kauli George Makasi, learned Senior State Attorney for the respondent.



A handwritten signature in blue ink, appearing to read "W.P. Dyansobera".

**W.P. Dyansobera**

**Judge**