

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**  
**(IN THE DISTRICT REGISTRY OF TANGA)**  
**AT TANGA**

**CRIMINAL APPEAL No. 45 OF 2021**

*(Originating from the District Court of Tanga at Tanga in Criminal  
Case No. 151 of 2018)*

**DIRECTOR OF PUBLIC PROSECUTIONS ----- APPELLANT**

**Versus**

**LABDA JUMAA BAKARI ----- RESPONDENT**

**RULING**

02.12. 2021 & 10.12.2021

F. H. Mtulya, J.:

The **District Court of Tanga at Tanga** (the district court) in **Criminal Case No. 151 of 2018** (the case) rendered down the decision of the case on 7<sup>th</sup> day of May 2020 and acquitted Labda Jumaa Bakari (the respondent) from the offence of forgery contrary to section 333 & uttering false document contrary to section 342 of the **Penal Code** [Cap. 16 R.E 2019] (the Code).

This decision dissatisfied the Director of Public Prosecutions (the appellant) hence approached this court and filed **Criminal Appeal No. 45 of 2021** (the appeal) on 13<sup>th</sup> September 2021 acting under the authority of section 379 (1) (b) of the **Criminal Procedure Act** [Cap. 20 R.E. 2019] (the Act).

The appeal was scheduled for mention on 22<sup>nd</sup> day of November 2021, and Mr. Stephen Sangawe who appeared for the respondent informed this court that the appeal was filed out of forty five (45) days required by the law in section 379 (1) (b) of the Act and no reasons were filed to substantiate the delay as per law in section 379 (2) of the Act.

This submission was not received well by Mr. Joseph Makene, learned State Attorney, who appeared for the appellant contending that he was surprised with the objection and was raised without any notice. On his part, he prayed for the right to be heard within a reasonable notice hence applied for leave of adjournment to consult and peruse documents in appellant's possession for a reply of the objection. This court noting right to be heard is a natural right recognised in human rights instruments, enacted in article 13 (6) (a) of the **Constitution of the United Republic of Tanzania** [Cap. 2 R. E. 2002] (the Constitution) and was cherished in the Court of Appeal precedent in **Judge In Charge, High Court at Arusha & The Attorney General v. Nin Munuo Ng'uni** [2004] TLR 44, granted three (3) days' leave for that purpose.

On 25<sup>th</sup> day of November 2021, the appeal was called for the preliminary objection hearing on point of law challenging the

jurisdiction of this court, but Mr. Makene prayed for another leave to consult legal authorities and Court of Appeal precedents on the subject and was granted seven (7) days leave for that purpose.

This court after noting the law in practice allows a point of law challenging jurisdiction of courts to be raised at any stage of proceedings, it decided to hear and determine the matter before proceeding to the hearing of the appeal on merit (see: **Shahida Abdul Hassanal Kassam v. Mahedi Mohamed Gulamali Kanji**, Civil Application No. 42 of 1999 and **R.S.A. Limited v. HansPaul Automechs Limited & Govinderajan Senthil Kumai**, Civil Appeal No. 179 of 2016). The reasoning of doing so is found at page 12 in the precedent of the Court of Appeal in **R.S.A. Limited v. HansPaul Automechs Limited & Govinderajan Senthil Kumai** (supra) that:

*...the jurisdiction to adjudicate any matter is a creature of statute. An objection in that regard is a point of law and it can be raised at any stage. It was not offensive on part of the respondents to raise it in the final submissions which was after the close of the hearing.*

It is fortunate that in the present appeal, before the hearing of the matter, the point challenging jurisdiction of this court was raised by Mr. Sangawe at the earliest stage of the appeal. His submission is that the decision of the case in the district court, according to the record of appeal, was delivered on the 5<sup>th</sup> day of May 2020, certified on the 11<sup>th</sup> day of May 2020 and proceedings were signed and ready for collection on the 24<sup>th</sup> day of May 2020.

According to Mr. Sangawe, following availability of the proceedings, the forty five (45) days of accountability on part of the appellant starts to take its course as per section 379 (1) (a) of the Act, and failure to act within the forty five (45) days, the appellant must produce good reasons as per law in section 379 (2) of the Act. Mr. Sangawe submitted further that the record of appeal shows that the appellant filed its petition of appeal on 13<sup>th</sup> September 2021 out of the statutory time without producing relevant materials for the delay orally or in writing as per section 392A (1) of the Act. Finally, Mr. Sangawe prayed the appeal be dismissed for want of time limitation.

However, the submission of Mr. Sangawe was protested by Mr. Makene who argued that the appeal was filed within forty five (45) days as per requirement of the law in section 379 (1)

(b) of the Act as the appellant received the copies of proceedings and judgment duly signed by the district court on the 5<sup>th</sup> day of August 2021 and preferred the appeal on 13<sup>th</sup> day of September 2021. In order to substantiate his argument, Mr. Makene produced a decision of the Court of Appeal in **Director of Public Prosecution v. Mawazo Saliboko @ Shagi & Fifteen Others**, Criminal Appeal No. 384 of 2017 contending that the forty five (45) days rule starts to apply after receipt of the requisite documents.

In his brief rejoinder, Mr. Sangawe submitted that the argument presented by Mr. Makene on receipt of necessary documents for appeal purposes on the 5<sup>th</sup> day of August 2021 has no any merit as it is not in the court record. Mr. Sangawe argued that the record shows that learned magistrate of the district court signed the proceedings on 24<sup>th</sup> May 2021 and were ready for collection hence days must be calculated from the 24<sup>th</sup> May 2021.

Mr. Sangawe submitted further that the claim of Mr. Makene that they received the necessary documents for appeal purposes on the 5<sup>th</sup> day of August 2021 was not substantiated by any evidence on record. With regard to precedent in **Director of Public Prosecution v. Mawazo Saliboko @ Shagi & Fifteen**

**Others** (supra), Mr. Sangawe submitted that the Court of Appeal said exactly on what he has argued in respect to the law in section 379 (2) of the Act on production of good cause and the appellant has not complied with the law in the appeal.

I have read the initiating law in this appeal, section 379 (1) (b) of Act, on powers of the appellant as regulated by section 378 of the Act. I have also scanned the provisions in sub section (1) (a) & (1) (b) of section 379 the Act on filing notice of intention to appeal within thirty (30) days and appeal in forty five (45) days respectively. I also have had an opportunity to peruse sub section 2 of section 379 of the Act on computation of days. The section which initiates this appeal is enacted in section 379 (1) (b) of Act which provides, in part, that:

*...no appeal shall be entertained unless the Director of Public Prosecutions or a person acting under his instructions as lodged his petition of appeal within forty five days from the date of such acquittal, finding, sentence or order; save that in computing the said period of forty five days the time requisite for obtaining a copy of the proceedings, judgment or order appealed against or of the record of proceedings in the case shall be excluded.*

It is fortunate in the present appeal, the learned minds and officers of this court are not disputing on this provision of the law, but on date when the appellant received the documents for appeal purposes. According to Mr. Makene, the appellant received the document on the 5<sup>th</sup> day of August 2021 whereas Mr. Sangawe submitted that the record shows the document were ready for collection on 24<sup>th</sup> day of May 2021. I perused the record of the appeal and found out that the judgment was duly signed and stamped on the 7<sup>th</sup> day of May 2020 and proceedings certified for collection on the 24<sup>th</sup> day of May 2021. I also searched any materials in the record of appeal which show the 5<sup>th</sup> day of August 2021 without any success. From the available materials on record, it is obvious that the appeal was filed out of time.

I also took time to visit the cited precedent of the Court of Appeal in **Director of Public Prosecution v. Mawazo Saliboko @ Shagi & Fifteen Others** (supra) and found a text at page 10 of the decision which shows that:

*...an intended appellant is required to lodge petition of appeal within **forty-five days reckoned from the date of receipt of the requisite copies.** There are several authorities by this Court which interpreted this provision*

of the law, some of them are **Sospeter Lulenga v. Republic**, Criminal Appeal No. 108 of 2006 and **Matheo Paulo & Another**, Criminal Appeal No. 398 & 400 of 2016...

(Emphasis supplied).

However, the Court of Appeal has put in place a very important clause at page 11 of the precedent in order to avoid appellants who file appeals at their own wishes. The Court stated:

*...from these decisions **what is important is proof of the date** of the decision, the date when the copy of the proceedings was applied for and the date when the same was supplied to the intending appellant.*

(Emphasis supplied).

In the present appeal, no materials were registered in the record to depict proof of dates as to when the appellant applied for the copy of the proceedings. Similarly, no record as to when the appellant was supplied with the proceedings. In the present appeal, even if the forty-five (45) days are excluded, as per law in section 379 (1) (b) of the Act, the appellant is still out of the



required time, as computed from the 24<sup>th</sup> day of May 2021 to the 13<sup>th</sup> day of September 2021.

Before I pen down, I must take the words of our superior court, the Court of Appeal, that it is a settled law in this jurisdiction that court record is always presumed to accurately represent what actually transpired in court (see: **Alex Ndendya v. Republic**, Criminal Appeal No. 207 of 2018; **Shabir F. A. Jess v. Rajkumar Deogra**, Civil Reference No. 12 of 1994; **Flano Alphonse Masalu @ Singu & Four Others v. Republic**, Criminal Appeal No. 366 of 2018 and **Paulo Osinya v. R** [1959] E.A 353. Court record, in short, is a serious document and cannot be lightly disregarded (see: **Halfani Sudi v. Abieza Chichili** [1998] TLR 527).

Having noted the materials in this record have no any reflection of the 5<sup>th</sup> August 2021, and recognizing the present appeal was filed out of time without leave of this court, I hereby struck out the appeal. I understand Mr. Sangawe prayed for dismissal order, but I decline to do so as I have not heard and determined the appeal on merit (see: **Ramadhani Beka v. The Republic**, Criminal Appeal No. 349 of 2016; **Francis Petro v. Republic**, Criminal Appeal No. 534 of 2016; and **Theotimo**

**Itanisa & Another v. Edwin Rugomola**, Civil Application No. 13  
of 2018).

Ordered accordingly.

Right of appeal explained.



F. H. Mtulya

**Judge**

10.12.2021

This Ruling is delivered in Chambers under the seal of this court in the presence of Ms. Donata Kazungu, learned State Attorney for the appellant, the Director of Public Prosecutions and in the presence of the respondent, Labda Jumaa Bakari and her learned counsel Mr. Stephen Sangawe.



F. H. Mtulya

**Judge**

10.12.2021