

IN THE HIGH COURT OF TANZANIA
AT MOROGORO

CRIMINA APPEAL NO. 15 OF 2021

*(Originating from Criminal Case No. 165/2018; in the Resident Magistrate's
Court of Morogoro, at Morogoro)*

SHIDA OMARY APPELLANT

VERSUS

REPUBLIC RESPONDENT

R U L I N G

31st March, 2022

CHABA, J.

On 24th day of November, 2021 the appellant, **Shida Omary @ Shomary** filed the instant petition of appeal challenging the decision of the Resident Magistrate's Court of Morogoro, at Morogoro where she was arraigned and charged with the offence of Trafficking in Narcotic Drugs Contrary to Section 15 A (1), (2) (c) of the Drugs Control and Enforcement Act No. 15 of 2015 as amended by the Written Laws (Miscellaneous Amendment) Act No. 3 of 2016.

It was alleged by the prosecution that on the 21st day of May, 2018 at Mwigole Mwembesongo area within the District of Morogoro in Morogoro Region, the accused person/appellant did Traffic in Narcotic Drugs to wit, Cannabis Sativa commonly known as Bhang weighting 2.57 Kilogram. The accused pleaded not guilty to the charge levelled against her. After full trial, she was sentenced to serve ten (10) years imprisonment. Discontented with the trial Court decision, she preferred an appeal before this Court challenging both conviction and sentence.

When the instant appeal was called on for hearing on 31/03/2022, Mr. Lordgud Eliamani assisted by Mr. Tonny Kilomo, both learned State Attorneys raised a preliminary objection on a point of law to the effect that the present appeal was filed out of time, hence improperly before this Court.

Mr. Lordgud submitted that the Judgement of a trial Court delivered on 17/06/2021 and the copies of Judgement and proceedings thereof were supplied to the appellant on 22/07/2021 and the Notice of Intention to Appeal before this Court was filed 21/06/2021 which is within the prescribed time. He argued, that the appellant's petition of appeal was filed out of 45 days contrary to section 361 (1) (b) of the Criminal Procedure Act [CAP. 20 R.E. 2019] (the CPA).

Mr. Lordgud submitted further that, in computing the period of 45 days, the time required for obtaining a copy of Judgement and the trial Court proceedings thereof, or Order appealed against shall be excluded. He stated that, since the Judgment was delivered on 17/06/2021 and the appellant made follow up to obtain both copies of Judgement and trial Court proceedings on 22/07/2021, therefore, 45 days expired in September, 2021. As the appellant filed her appeal on 24/11/2021, it is obvious that she filed out of 45 days. The learned State Attorney prayed and asked this Court to dismiss the appellant's petition of appeal.

On her part, the appellant conceded with the argument advanced by the learned State Attorney and prayed to withdraw her petition of appeal so that she could be able to lodge an application for extension of time to file her appeal out of time.

As noted by Mr. Lordgud, it is a trite law that a notice of intention to appeal before this Court is require to be filed within ten (10) days from the

date of Judgement and the intended appeal must be filed within 45 days from the date of Judgement. The relevant provisions of the law is Section 361 (1) (b) of the Criminal Procedure Act (Supra). It provides inter-alia that:

“Section 361 (1) subject to subsection (2), no appeal from any findings, sentence or order referred to in section 359 shall be entertained unless the appellant”.

- a) Has given notice of intention to appeal within ten days from the date of findings, sentence or orders or, in the case of sentence of corporal punishment only, within three days of the date of such sentence; and
- b) Has lodged in petition of appeal within forty-five days from the date of the findings, sentence or order, save that in computing the period of forty-five days the time required for obtaining a copy of the proceedings, judgement or order appealed against should be excluded.

From the above position of the law and considering the fact that the record bear out that the appeal was filed out of time and the appellant prayed to withdraw so that she can first lodge an application before this Court seeking for an extension of time to file her appeal out of time, I don't see any reason to refute her prayers taking into account that the preliminary objection raised by the Prosecution through Mr. Lordgurd is purely on a point of law.

In the result, I hold that appellant's petition of appeal is incompetent before this Court. Consequently, the appeal is struck out with the leave to file an application for extension of time to file an appeal out of time.

Orders accordingly.

DATE at MOROGORO this 31st day of March, 2022.



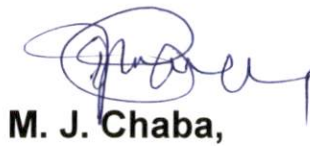
M. J. Chaba,

Judge

31/03/2022

Court:

Ruling delivered this 31st day of March, 2022 in Chambers in the presence of Mr. Lordgud Eliamani assisted by Mr. Tonny Kilomo, both learned State Attorneys, for the Respondent/Republic and the Appellant who appeared in person, unrepresented.



M. J. Chaba,

Judge

31/03/2022