

**IN THE HIGH COURT OF THE UNITED REPUBLIC TANZANIA
IN THE DISTRICT REGISTRY OF MOROGORO
CRIMINAL APPEAL NO. 12 OF 2021**

**(Originating from Criminal Case No. 22 of 2021, in the District Court of
Mvomero, at Mvomero)**

MAULID SALUM APPELLANT

VERSUS

THE REPUBLIC RESPONDENT

RULING

5th & 29th April, 2022

CHABA, J.

The Appellant lodged this appeal under Sections 361 (1) and 362 (1) and (2) of the Criminal Procedure Act [Cap. 20 R.E. 2019] (the CPA) together with the Notice of Appeal made under section 361 (1) (a) of the CPA. In order to appreciate the decision in this ruling, I find it appropriate to recount albeit briefly, the background of the material facts resulted to this appeal.

The appellant was convicted for the offence of Trafficking in Narcotic Drugs contrary to sections 15A (1) (2) (c) of the Drugs Control and Enforcement Act [Cap. 95 R.E. 2019], on her own plea of guilty before the District Court of Mvomero, at Mvomero. At the end of trial, the appellant was found guilty of the offence, convicted and sentenced to serve thirty (30) years imprisonment on 02/03/2022. According to court record the copy of judgment was certified on 23/03/2022. Discontented with the trial court decision, preferred an appeal before this court on the

21st day of October, 2021 having filed his Notice of Appeal on the 10th day of March, 2021 within the prescribed period of time.

When this appeal was called on diverse dates, the respondent appeared by various learned State Attorneys. On 05/04/2022 Mr. Lordgud Eliamani, learned State Attorney, entered appearance for the respondent and raised a preliminary objection on the ground that the appeal is barred in law for being filed out of time without first applying for leave or extension of time. As a matter of procedure, I was obliged to deal first with the raised points of law as I believed that if the points of law could stand, then this appeal could collapse automatic.

At the hearing of preliminary objection, Mr. Eliamani argued that the appellant's appeal was filed out of time, more than seven months after expiry of the time. He submitted that the appellant had to seek first for an extension of time before filing his appeal. He submitted that it was contrary to section 361 (1) (b) of the CPA. The respondent prayed that this appeal be struck out so that the appellant may be given time to file his appeal in accordance with the law.

On his part, the appellant being a lay person, had nothing useful to state. He just said, he was supplied with the copy of judgment in May, 2021 and his application was presented before this court in July, 2021. Upon reviewing the court record, I noted that what was stated by the appellant was correct account.

The basic question is whether the objection bears any merit and what would be the remedy. I have considered the submission by Mr. Eliamani and had an ample time to travel through the trial court proceedings. My observation is that the appellants account exposed and

proved that he was, accordingly convicted and sentenced on 02/03/2022. Dissatisfied with the trial court decision, the appellant filed his of Notice of Appeal on 10th day of March, 2021 which is within the prescribed period of time and the copy of judgment were certified on 23/03/2021. The appellant, without first seeking leave under section 361 (2) of the CPA he preferred an appeal before this court on 21st October, 2021. The law under section 361 (1) (b) of the CPA is clear that the appellant ought to be filed his appeal within 45 days from the date of collecting the certified copy of judgment as time spent for collection is excluded under the above provisions of the law. When the appellant filed this appeal, a total of seven (7) months had already elapsed, thus hopelessly out of time.

As correctly submitted by the learned State Attorney, I upright accept his submission on the ground that, that is the position of the law. As gleaned from the court records, the present appeal is out of time and thus incompetent before this court. I will accept the objection as the same has merit.

In the final event, this appeal is incompetent before me and before this court. Without hesitation, I proceed to strike out for being out of time. As suggested by Mr. Eliamani, the appellant is at liberty to comply with the relevant law. **It is so ordered.**

DATED at **MOROGORO** this 29th day of April, 2022.


M. J. Chaba

Judge

29/04/2022

Court: Ruling delivered at my hand and Seal of this Court in Chambers this 29th day of April, 2022 in the presence of the Ms. Jamila Mziray, learned State Attorneys for Respondent / Republic and the appellant who appeared in person, unrepresented.



M. J. Chaba

Judge

29/04/2022

