

**THE UNITED REPUBLIC OF TANZANIA  
JUDICIARY  
IN THE HIGH COURT OF TANZANIA  
MBEYA DISTRICT REGISTRY  
AT MBEYA  
CRIMINAL APPEAL NO. 13 of 2022  
(Originated from the Court of Resident Magistrate of Mbeya  
at Mbeya, Criminal Case No. 237 of 2020)**

**MPESO NJANGAJE.....APPELLANT  
VERSUS  
THE REPUBLIC.....RESPONDENT**

**R U L I N G**

*Dated: 13<sup>th</sup> June, 2022*

**KARAYEMAHA, J**

Mpeso Njangaje, the appellant, is currently behind the bars. He was arraigned before the Resident Magistrate's Court of Mbeya for the offence of Trafficking in Narcotic Drugs c/s 15 A (1) of the Drugs Control and Enforcement Act No. 5 of 2015 as amended by section 9 of the Drugs Control and Enforcement (Amendment) Act No. 15 of 2017.

The allegation is that on 2<sup>nd</sup> day of July, 2020, at Ikukwa village, within Mbeya Rural District, in Mbeya region, the appellant was unlawfully found trafficking in narcotic drugs to wit, 7.36 kilograms of cannabis sativa commonly known as bhanghi. After a full trial, he was convicted and

finally sentenced to a minimum jail term of 30 years imprisonment. Aggrieved by the conviction and sentence, the appellant preferred the present appeal which has eleven grounds of appeal.

Today, when the appeal was called on for hearing, Mr. Lodgard Eliaman, learned State Attorney, representing the respondent, rose to address the court that the appeal is time barred. He submitted that as per copies of judgment and proceedings of the trial court, the appellant was supplied with the copies on 19/05/2021 but filed the instant appeal on 31/01/2022. So, he was late for seven (7) months. The learned State Attorney has observed that the appellant did not apply for extension of time to file the appeal out of time. Citing section 361 (1) (b) of the Criminal Procedure Act [Cap. 20 R.E 2019] (the CPA) Mr. Eliaman remarked that the appellant had only 45 days to appeal. He said that if copies were supplied late days in which he was waiting to be supplied would be excluded failure of which this appeal should be dismissed.

Expectedly, the layman appellant who had no legal representation, simply asked this court to help him because he was supplied with a judgment and proceedings late hence delayed to appeal.

Having heard parties' submissions, I navigated through the court record. It is categorical that the appellant was convicted on 19/05/2021. The proceedings and judgment were ready for consumption on 19/05/2021. The appellant lodged an intention to appeal on 20/05/2021. Referring to the copy of judgment attached to the petition of appeal, it apparent that Prison officer in charge of Ruanda Prison office received the same on 31/08/2021. However, as per the petition of appeal, the appellant's appeal was filed on 31/01/2022. This means the appellant was late for five (5) good months.

In view of section 361 (1) (b) of the CPA, any appeal is entertained when it is filed within 45 days. Short of that it cannot be entertained. For easy of reference, let the provision talk:

*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-*

*(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.*

Since, the appellant lodged his appeal after the expiry of 45 days, his appeal cannot be entertained. He cannot also benefit from the exception that in computing the period of forty five days the time required for obtaining a copy of the proceedings and judgment appealed against shall be excluded because the record indicates that he received the copies on 31/08/2021.

To cum it all, I agree with Mr. Eliaman that the appellant's appeal is time barred. Consequently, this appeal is hereby struck out.

It is so ordered.



**DATED at MBEYA this 13<sup>th</sup> day of June, 2022**

A handwritten signature in black ink, appearing to read "J.M. Karayemaha".

---

**J. M. KARAYEMAHA  
JUDGE**