

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

CRIMINAL APPEAL NO. 5 OF 2022

(Originating from Economic Case No. 89 of 2018; in the Court of Resident Magistrate's Court of Morogoro, at Morogoro)

LUFINO GABRIEL @ MWAKAYELA.....APPELLANT

VERSUS

THE REPUBLIC.....RESPONDENT

R U L I N G

18th August, 2022

CHABA, J.

This is a ruling is in respect of a preliminary objection on a point of law raised by the Respondent/Republic on a competency of this appeal. Initially, the Appellant, Lufino Gabriel @ Mwakayela and Another were arraigned before the Resident Magistrate's Court of Morogoro, at Morogoro charged with the offence of Unlawful Possession of Government Trophies Contrary to Section 86 (1), (2) (b) and (3) of the Wildlife Conservation Act No. 5 of 2009 as amended by Written Laws (Miscellaneous Amendment) Act No. 4 of 2016 read together with Paragraph 14 of the First Schedule and Sections 57 (1) and 60 (2) of the Economic and Organized Crimes Control Act [Cap. 200 R. E. 2002] as amended by Written Laws (Miscellaneous Amendment) Act No. 3 of 2016.

At the end of trial, the appellant was convicted and sentenced to serve fifteen (15) years imprisonment. Dissatisfied with the trial court decision, he has preferred the instant appeal before this court challenging both conviction and sentence. However, his appeal is hammered with the

preliminary objection on a point of law raised by the Respondent/Republic for being out of time.

At the hearing of this preliminary objection, Ms. Theodora Mlelwa learned State Attorney entered appearance for the Respondent/Republic whereas Appellant, Lufino Gabriel @ Mwakayela appeared in person, unrepresented.

Submitting in support of the preliminary objection on a point of law, Ms. Mlelwa argued that this appeal is incompetent for one reason that it was filed out of time as prescribed by the law. She went on submitting that the Judgement was delivered on 3/3/2021 and the same was ready for collection upon being certified as true copy of the original on 6/9/2021. The appellant received copies of both Judgment and trial court proceedings on 24/09/2021 through a prison officer namely A/Insp. G. Myinga. This fact was proved by a copy of dispatch handled and controlled by the court.

Explaining the position of the law, Ms. Mlelwa accentuated that section 361 (1) (b) of the Criminal Procedure Act [Cap. 20 R. E. 2022] is clear that subject to subsection (2), an appeal from any findings, sentence or order referred to in section 359 shall not be entertained unless the appellant:

- (a) ... N/A;
- (b) *Has lodged his petition of appeal within forty-five days from the date of 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".

She submitted that as the appellant received his documents on 24/09/2021 and filed his appeal on 10/03/2022 which is almost six months from the date he received copies of judgment and other necessary documents, it is clear that he filed his appeal out of time thereby contravening the provision of the law under section 361 (1) (b) of the CPA (Supra) which requires, as alluded to above, the petition of appeal be filed within 45 days from the date of judgment. Ms. Mlelwa referred this court to the case of **David Mwisaga @ Ganza v. The Republic**, Criminal Appeal No. 172 of 2019 to reinforce her argument.

On the strength of the above points, the learned State Attorney urged this court to strike out the appeal.

On his part, the appellant briefly replied that the delay was caused by some reasons beyond his control. He submitted that the challenges that he faced by then is that while at Mtego wa Simba Prison at Kingolwila area within Morogoro Municipality his appeal was prepared, but later was transferred to Morogoro Prisons. He said, this is where the problem arose. So, when his appeal was prepared by the assistance of Prisons Authority it was within time, but later he found himself out of time when was transferred to Morogoro Prisons.

He finally concluded that, since his appeal is out of time, he prayed to withdraw the same with a view to file an application for extension of time.

In rejoinder, Ms. Mlelwa reiterated what she stated earlier in her submissions in chief.

Having heard and considered the parties submissions, I am in agreement with the learned State Attorney's submissions that filling a petition of appeal before this court is governed by the Criminal Procedure

Act [Cap. 20 R. E. 2019] now [R. E. 2022]. The law prescribed the time within which the Notice of Intention to Appeal and Petition of Appeal should be filed. As hinted above, the law requires the appellant to file his/her petition of appeal within 45 days from the date of judgment, sentence or order. However, the law stipulates that the time required for obtaining a copy of judgement or proceedings is not included in computing the time limitation. As noted at page 2 above, the court has discretionary power to extend the time limitation if there is sufficient or good cause for so doing (see: section 361 (2) of the CPA (Supra). The rationale behind, as correctly submitted by the learned State Attorney, is to ensure that the court business is well guided by the law to avoid endless litigation and respect the time limits provided by the law.

However, considering the fact that the appellant conceded to what the learned State Attorney highlighted and rightly demonstrated how the appellant delayed to file his appeal, and taking into account that the appellant also lastly prayed to withdraw his appeal, this court has nothing to do with the appellant's appeal, rather than to grant his prayer as the truth is that in the circumstance of this case, I am incapable to entertain an appeal filed out of time unless leave is granted to that effect. The only remedy available to the appellant is to apply for the extension of time to file his appeal out of time.

That said and done, this appeal is hereby struck out on the ground of incompetence. **It is so ordered.**

DATED at MOROGORO this 18th day of August, 2022.



M. J. Chaba

Judge

18/8/2022