

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

**CRIMINAL APPEAL NO. 10 OF 2022**

*(Originating from Economic Case No. 6 of 2019; in the Court of Ulanga, at Mahenge)*

**HASSAN SALUMU @ CHIKOKO .....1<sup>ST</sup> APPELLANT**

**SUDI SALUM.....2<sup>ND</sup> APPELLANT**

**VERSUS**

**THE REPUBLIC.....RESPONDENT**

**R U L I N G**

**15<sup>th</sup> & 26<sup>th</sup> August, 2022**

**M. J. CHABA, J.**

This is a ruling is in respect of a preliminary objection on a point of law raised by the Respondent/Republic on competency of the instant appeal. At first, the Appellants, Hassani Salumu @ Chikoko and Sudi Salumu were arraigned before the District Court of Ulanga, at Mahenge charged with the offence of Unlawful Possession of Government Trophies Contrary to Section 86 (1), (2) (c) (ii) and (3) of the Wildlife Conservation Act No. 5 of 2009 [Cap. 283 R. E. 2022] 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] now [R. E. 2022]

After a full trial, each of the appellant was convicted and sentenced to pay 690,000,000/= or in default each of the appellant sentenced to serve twenty (20) years imprisonment. Discontented with the trial court decision, the appellants preferred this appeal armed with ten (10) grounds

of appeal. The Republic resisted the appeal upon filing preliminary objection on a point of law on the ground that the same has been filed out of time.

At the hearing of the preliminary objection, Ms. Theodora Mlelwa learned State Attorney entered appearance for the Respondent/Republic while the Appellants, Hassani Salumu @ Chikoko and Sudi Salumu appeared in persons, and unrepresented.

Arguing in support of the raised preliminary objection on a point of law, Ms. Mlelwa submitted that this appeal is incompetent before this court on the ground that the same has been filed out of time as prescribed by the law. She argued that the court record shows that the Judgement of the trial court delivered on 13/04/2021 and Notice of Intention to Appeal was filed on 19/04/2021 and complied with the provisions of the law under section 361 (1) of the Criminal Procedure Act [Cap. 20 R.E. 2022] (the CPA). However, the appellants filed their appeal on 15/03/2022 which is almost a year since when the judgment was delivered. She went on submitting that the provisions of the law under section 361 (1) (b) of the CPA was offended. The learned State Attorney highlighted further that the court records shows that the appellants were lately supplied with the copies of judgment and trial court proceedings.

Basing on the above points, the learned State Attorney prayed the court to dismiss the appellant's appeal.

On their part, the appellants responded by differently as follows: The 1<sup>st</sup> appellant submitted that since at the material time had nothing to say, he prayed the court to help him and decide the matter. On his part, the 2<sup>nd</sup> appellant submitted that they delayed to file their appeal due to the outbreak of Covid 19 pandemic. Another reason for delay was due to the restructuring of the High Court of (T) - Dar Es Salaam as it was in the

processes of separating from Morogoro Zone. He prayed the court to consider his appeal accordingly.

In rejoinder, Ms. Mlelwa reiterated what she submitted in chief.

Having heard and considered the parties submissions, I find it appropriate to start with the guiding provisions of the law. Normally, filing a petition of appeal before this court is governed by the CPA (Supra). Under Section 361 (1) (b) of the CPA provides 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”.

From the wording of the above provisions of the law, it is clear that the law prescribed the time within which the Notice of Intention to Appeal and Petition of Appeal should be filed. The law requires the appellant to file his or her petition of appeal within 45 days from the date of judgment, sentence or order. Explaining why this appeal is out of time, Ms. Mlelwa underlined that the trial court delivered her judgment on 13/04/2021 and the Notice of Intention to Appeal was duly filed in time on 19/04/2021 as provided by the law under section 361 (1) of the CPA. Only that the appellants delayed to file their appeal almost a year from the date of judgment 15/03/2022. No doubt that the governing provision of the law under section 361 (1) (b) of the CPA was contravened. It is evident from

the record that the appellants were supplied with the copies of judgment and trial court proceedings on 15/03/2022. In the circumstance, the appellants were supposed to apply for an extension of time within which to file their appeal.

It is trite law that the time spent for obtaining a copy of judgement or proceedings is not included in computing the time limitation. However, the court has discretionary power to extend the time limitation if there is sufficient or good cause for so doing as provided by the law under section 361 (2) of the CPA (Supra). The rationale behind 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.

In the event, I am inept to entertain an appeal filed out of time unless leave for an extension of time is granted in accordance with the law. The only remedy available to the appellants is to apply for the extension of time to file their appeal out of time.

That said and done, the preliminary objection raised by the Republic is meritorious. The appeal is hereby struck out on the ground of incompetence.

**It is so ordered.**

**DATED at MOROGORO** this 26<sup>th</sup> day of August, 2022.



**M. J. Chaba**

**Judge**

**26/08/2022**

**Court:**

Ruling delivered at my hand and Seal of the Court this 26<sup>th</sup> day of August, 2022 in the presence of the Appellants who appeared in persons linked via video conference from Morogoro Prison and Ms. Edga Bantulaki, learned State Attorney for the Respondent/Republic.



**M. J. Chaba**

**Judge**

**26/08/2022**

Court: Right of parties fully explained.



**M. J. Chaba**

**Judge**

**26/08/2022**