

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(DAR ES SALAAM DISTRICT REGISTRY)  
AT DAR ES SALAAM**

**CRIMINAL APPEAL NO. 03 OF 2021**

**SADICK HAMAD NDIUZE..... APPELLANT**

**VERSUS**

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

(Being an appeal from the decision of the District Court of Morogoro at  
Morogoro (Hon. J.Z. Chacha (RM))

dated the 13<sup>th</sup> day of April, 2021

in

Criminal Case No. 14 of 2020

**JUDGMENT**

14 & 15 March, 2022

**S.M. KALUNDE, J.:**

Before the District Court of Morogoro at Morogoro (henceforth "the trial Court") the appellant, SADICK HAMAD NDIUZE, was arraigned charged with one count of rape contrary to section **130(1)(2)(e)** and **131(3)** of the Penal Code, Cap. 16 R.E. 2002 to which he pleaded not guilty. The case before the trial court was registered as **Criminal Case No. 14 of 2020**. In accordance with



the records, the particulars of the offence were that on 06<sup>th</sup> December, 2019 at Mbuyuni area, Rudewa Ward within Kilosa District in Morogoro Region, the appellant had carnal knowledge of one SR, a five (5) years old girl. After full trial the trial court convicted the applicant and sentenced him to life imprisonment in accordance with section 131(3) of Cap. 16.

Aggrieved by the proceedings in Criminal Case No. 14 of 2020 and the subsequent conviction and sentence the appellant filed the present appeal which is predicated on nine grounds that may be summarized into the following grievances:

- 1. That the trial court erred in convicting the appellant based on contradictory evidence of prosecution witnesses;*
- 2. That the trial court erred in failing to draw negative inference on failure of the prosecution to summon the investigator of the case;*
- 3. That the trial court erred in convicting the appellant based on malicious and fabricated evidence;*
- 4. That the prosecution failed to prove the case beyond reasonable doubt;*

Hearing of the appeal was conducted through virtual court as both the appellant and the counsel representing the respondent were in Dar es Salaam. At the hearing, the appellant appeared in person unrepresented. The respondent, the Republic, was represented by **Mr. Edgar Bantulaki** learned State Attorney.

At the outset Mr. Bantulaki raised a point of law that the appeal was filed out of time and without leave of the Court in contravention of section 361 of **the Criminal Procedure Act, Cap. 20 R.E. 2019** (henceforth "the CPA"). In support of his argument Mr. Bantulaki argued that the proceedings and Judgement of the trial court were certified as ready for collection and were served on the appellant on 28<sup>th</sup> June, 2021 at Morogoro Prison ("Gereza la Mahabusu Morogoro"). The counsel added that there was no dispute the appeal was lodged before the Court on 19<sup>th</sup> August, 2021 almost two weeks after the expiry of the 45 days limitation period fixed under section 361(1)(b) of the CPA. Mr. Bantulaki concluded the appeal out to be struck out to allow the appellant to lodge an application for extension of time.

In reply the appellant admitted that it was correct that copies of proceedings and Judgement were dispatched to the Morogoro Prison on 28<sup>th</sup> June, 2021. However, he argued that the same were supplied to him on 29<sup>th</sup> June, 2021. The appellant added that subsequent to receipt of certified copies of proceedings and Judgement on 08<sup>th</sup> July, 2021 he was transferred to Ukonga Prison in Dar es salaam. Upon his arrival in Dar es Salaam, on 09<sup>th</sup> July, 2021 he forwarded the records for preparation of the appeal and the same were accordingly filed. He pleaded the appeal be heard on account that he was a layperson not aware of the legal requirement and for being at the mercy of prison officers.

In a brief rejoinder Mr. Bantulaki reiterated his submission in chief and insisted that the appeal ought to be struck out to allow the appellant to lodge an application for extension of time in accordance with section 361(2) of the CPA.

Having considered the submissions of the parties and examined the record of appeal, we think that the sticking question is whether the present appeal was filed within the prescribed time limit. The first



point to start would the provisions of section 361 of the CPA. The section reads:

*"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-*

*(a) has given notice of his intention to appeal within ten days from the date of the finding, sentence or order or, in the case of a sentence of corporal punishment only, within three days of the date of such sentence; and*

*(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.*

*(2) The High Court may, for good cause, admit an appeal notwithstanding that the period of limitation prescribed in this section has elapsed.*

The applicability of the above provision of the law was as recent as 22<sup>nd</sup> February, 2022 amplified by the Court of Appeal in the case of **Lazaro Mpigachai vs Republic** (Criminal Appeal 75 of

2018) [2022] TZCA 50 (22 February 2022 TANZLII) wherein the Court, (**Koroso, J.A.**) having recited section 361 of the CPA observed that:

*"Essentially, in terms of section 361(l)(a) and (b) of the CPA for the appeal to be within time, an intended appellant must do the following steps: **One**, to give or file a notice of intention to appeal within 10 days after the delivery of the challenged finding, sentence, or order and **two**, to file the petition of appeal should within 45 days from date of the finding, sentence or order. The provision also expounds on the modality of computing time related to limitation. Particularly, it states that, in computing the 45 days to file the petition of appeal, the time required for obtaining a copy of the proceedings, judgment or order appealed against shall be excluded. In essence, the provision underscores that when computing the 45 days of filing the petition of appeal, the time that is used to obtain proceedings, judgment and order is automatically excluded."*

In the instant case, the impugned decision was delivered on 13<sup>th</sup> day of April, 2021. The appellant lodged a notice of appeal on

14<sup>th</sup> April, 2021, well within the ten (10) days allowable by law. However, as rightly by Mr. Bantulaki and admitted by the appellant, copies of proceedings and judgment were certified as ready for collection and dispatched his last known address on 28<sup>th</sup> June, 2021. They were eventually served on the appellant on 29<sup>th</sup> June, 2021 at Morogoro Prison. In terms of the above authority the period from 13<sup>th</sup> April, 2021 when the decision was delivered to 29<sup>th</sup> June, 2021 when the certified copies of proceedings and judgment were served on the appellant is excluded from computation of the 45 days required to lodge the petition of appeal.

On account of the above set of facts, the clock for the limitation period started to run against the applicant from the 20<sup>th</sup> June, 2021 and expired on 03<sup>rd</sup> August, 2021. Having filed the petition of appeal on 19<sup>th</sup> August, 2021, the appellant was late by almost 16 days. It follows therefore that, the appellant ought to have lodged an application for extension of time in terms of section 361(2) of the

CPA: 

I am thus constrained and find that the petition of appeal was filed out time in contravention of section 361(1) (b) of the CPA. In the circumstances I have no remedy than to strike out the petition of appeal.

**Order accordingly.**

**DATED at DAR ES SALAAM this 15<sup>th</sup> day of MARCH, 2022.**



*[Handwritten Signature]*  
S.M. KALUNDE

**JUDGE**