

IN THE HIGH COURT OF TANZANIA
MUSOMA DISTRICT REGISTRY
AT MUSOMA

CRIMINAL APPEAL NO. 83 OF 2022

(Original Criminal case No. 518 of 2019 of the District Court of Tarime at Tarime)

THE REPUBLICAPPELLANT

VERSUS

WEREMA MATIKU KIRUKU..... RESPONDENT

RULING

17th & 22 May, 2023

M. L. KOMBA, J:

This is a **ruling in respect of the Preliminary Objection** (the PO) raised by the respondent objection hearing of the appeal in the account that it is filed out of time. The PO was filed prior to the hearing date of the appeal.

On the hearing date Mr. Nico Malekela and Natujwa Bakari both state Attorney represented Republic while Mr. Kalaka Geoffrey appeared for the respondent. Mr. Geoffrey was the first to address the court on objection he raised. It was his submission that the appeal by the Republic was filed out of time and it is contrary to section 379 (1) (b) of the Criminal Procedure Act. [CAP 20 R. E. 2022] (the CPA). He submitted that the appeal arose from

the criminal case no. 518 of 2019 which was decided on 10/11/2020 and copy of judgement were ready for collection on 03/06/2021.

Further he submitted that on 13/11/2020 the appellant filed notice of appeal and on 05/09/2022 they filed an appeal. Counting from 03/06/2021 when the documents were ready for collection time lapsed on 18/07/2021 and therefore he concluded that the appeal was filed one year later without leave of the court. He referred the case of **Martha Robert vs. Managing Director Mashere Intreprises**, Civil Case No.4 of 2012 at page 5 that time should be counted starting the date judgement was certified or were ready for collection and it was upon the parties to make a follow up and receive the copies. He said it is not the court responsibility to inform the party to go and collect unless it is court of appeal. He prays this court to dismiss the appeal as it is filed out of time.

Contesting the PO, Ms. Natujwa submitted that the appeal was filed on time as per section 379 (1) (b) as the stipulated time is 45 days from the date of the decision and that the time wasted when waiting to be supplied with proceedings should not be countered. She further submitted that it is true the judgement was delivered on 10/11/2020 and on 13/11/2020 the appellant filed notice of appeal, copies of proceedings were supplied on

09/08/2022 and there after they filed an appeal on 05/09/2022. Counting from the date they were supplied with copy of proceedings is only 26 days and therefore they filed this appeal on time.

She submitted that the cited provision should be read together that is section 379 (1) (a) and (b) and that their intention of appealing against decision is shown in notice of appeal and referred the case of **DPP vs. Erasmus John Swai**, Criminal Appeal No.80 of 2021 to the effect that the time where DPP was waiting to be supplied with the copy should not be counted. Further in **DPP vs. Lengai Ole Sabaya and Others**, Criminal Appeal No. 155 of 2022 it was decided time spend should not be counted. The received date of the said proceedings is shown in the attached proceedings from the office of the DPP which is clearly shown.

Mr. Malekela on his part he said the supplied case of Martha is distinguishable as the case referred the Limitation Act while the objection is raised under section 379 of the CPA and that the office of the DPP is supplied by the records from the trial court and pray this court to find the appeal was filed on time.

On rejoinder Mr. Geoffrey submitted that the cited case by State Attorney is about exclusion of time where parties have requested necessary documents and that there is nowhere is written that DPP should be served with the court even in section 379(1) (a) and (b) there is nowhere it is written courts are duty bound to supply the DPP with proceedings. He insisted that was not the intention of the legislature.

After hearing parties, it is not disputed that the appeal was filed on 05/09/2022. Point of controversial among the parties is when to start counting the days, is it from the day copies were ready for collection or when the copied reached the party. In the case of **DPP vs. Mawazo Saliboko @ Shagi and 15 Others**, Criminal Appeal 384 of 2017 court of appeal held that;

*'We are therefore settled that the time requisite for obtaining a copy of the proceedings and judgement for appeal purposes has been excluded by the law in terms of the proviso to section 379 (1) (b) of the CPA. The appellant was therefore entitled to file his appeal within **45 days after receipt of the copy of proceedings and judgment.** He need not apply for extension of time to do so.'*

Perusing the document in this appeal I find the received stamp of the office of the DPP which reads 09/08/2022. From the above excerpt of the decision

of the court is, the appellant was supposed to file the appeal within 45 days from 09/08/2022 when they receive the said copies. Record further show that the appeal was filed on 05/09/2022 the fact which was not disputed by the counsel for the respondent. The issue of when to start counting the day is answered by the higher court and I find there is no need of wasting more time.

I find the appeal was filed on time and the PO is hereby overruled. The appeal to be heard on substantive grounds.

It is ordered accordingly.

DATED in **MUSOMA** this 22th Day of May 2023



NK
M. L. KOMBA
Judge