

IN THE HIGH COURT OF TANZANIA

(MTWARA DISTRICT REGISTRY)

AT MTWARA

CRIMINAL APPEAL NO.32 OF 2023

*(Originating from the District Court of Kilwa at Masoko in Economic Case
No.10 of 2021)*

MBALU CHARLE MTEMI.....APPLICANT

VERSUS

THE REPUBLIC.....RESPONDENT

RULING

12/7/2023

LALTAIKA, J.

When this application came for hearing today, the appellant appeared in person and unrepresented, while the respondent/Republic was represented by **Mr. Melchior Hurubano**, learned State Attorney.

Before proceeding further, the learned State Attorney raised a preliminary objection, asserting that the Petition of Appeal was filed out of time, thus contravening **section 361(1) (b) of the Criminal Procedure Act [Cap. 20 R.E. 2022]**. Mr. Hurubano contended that the Petition of Appeal was filed in court beyond the specified timeframe because the impugned judgment **was delivered on 18/10/2022**. Furthermore, he submitted that the impugned judgment **was received on 10/2/2023**, while the certified proceedings **were received on 16/3/2023**. The learned State Attorney argued that the **deadline for filing the Petition of**

Appeal was on 11/5/2023. Consequently, Mr. Hurubano maintained that the Petition of Appeal was filed beyond the 45-day period mandated by law, rendering it incompetent and should be struck out.

In response, the applicant, not being learned in law, had nothing to submit to counter the arguments of the learned State Attorney. Insisting that his appeal be determined on its merits, the applicant invited the court to consider his grounds for delay in lodging an appeal.

Having reviewed the submissions presented by the learned State Attorney, I am inclined to decide on the merit or lack thereof regarding the preliminary objection. Section 361(1) (b) of the Criminal Procedure Act stipulates that the time limit for appealing to this court from a decision of the subordinate court is forty-five (45) days from the date of the finding, sentence, or order. However, the same provision, section 361(1) (b) of the Criminal Procedure Act, includes a proviso requiring this court to exclude the days or time spent waiting for a copy of the proceedings, judgment, or order being appealed when calculating the 45-day period.

For ease of reference and comprehension, the provision of section 361(1)(b) reads as follows:

"361.-(1) Subject to subsection (2), an appeal from any finding, sentence, or order referred to in section 359 shall not be entertained unless the appellant;

(a) N/A

(b) has lodged their 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."

The above-mentioned provision of the law was adequately stated by the Court of Appeal of Tanzania in its recent decision of **SAID SHAIBU MWIGAMBO VS REPUBLIC (CRIMINAL APPEAL 420 OF 2021) [2023] TZCA 148** (28 March 2023), on page 6, where it stated, among other things:

"It is evident from the above provision that entertaining an appeal against conviction, sentence, or order is conditional upon the appellant, who has filed a notice of intention to appeal, lodging their petition of appeal within 45 days from the date of the impugned decision. However, the legislature, in its wisdom, anticipated circumstances in which copies of proceedings, judgment, or order may not be available immediately after the delivery of judgment. There is no denying that such circumstances are not uncommon among us. Consequently, it made allowances for the period necessary for the preparation of such documents by calculating the period from the date such documents are obtained. In our considered view, the phrase 'ready for collection' presupposes that the court responsible for preparing the documents notifies the appellant, in this case, through the Prison to which they were committed, of that effect."

In the present case, as previously mentioned, the trial court delivered the impugned judgment on 18/10/2022. However, the appellant received a copy of the certified impugned judgment on 10/2/2023, while the certified proceedings were received on 16/3/2023. Additionally, the appellant lodged his Petition of Appeal on 11/5/2023. By adhering to the provisions of section 361(1) (b) of the Criminal Procedure Act, I will exclude the days during which the appellant awaited the copies of the certified judgment and proceedings.

Based on the aforementioned position, the forty-five-day period for lodging an appeal to this court starts from 16/3/2023 to 11/5/2023 when the appellant lodged their appeal in this court. Therefore, the crucial issue at

hand is whether the appellant lodged his appeal within the prescribed time limit.

To answer this question, it is imperative to perform a simple arithmetic calculation, which reveals that there were fifty-five (55) days between 16/3/2023 and 11/5/2023. Consequently, the appellant was required to lodge his Petition of Appeal on or before 01/5/2023, as that was the date when the forty-five-day period elapsed. By lodging the appeal on 11/05/2023, it is evident that the appellant filed it beyond the forty-five-day limit, and without mincing words, the appellant delayed for ten (10).

For the aforementioned reasons, I uphold the preliminary objection raised by the respondent and proceed to strike out the appeal for being incompetent.

It is so ordered.




E.I. LALTAIKA
JUDGE
12.7.2023

Court: This ruling is delivered under my hand and the seal of this court on this 12th day of July 2023 in the presence of Mr. Melchior Hurubano, learned State Attorney and the applicant who has appeared in person, unrepresented.




E.I. LALTAIKA
JUDGE
12.7.2023