

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE SUB- REGISTRY OF MANYARA

AT BABATI

CRIMINAL APPEAL No. 47 OF 2023

(Arising from Criminal Case No. 175 of 2018 of Kiteto District Court at Kibaya)

SAID HASHIMU.....APPLICANT

VERSUS

REPUBLICRESPONDENT

RULING

29/8 & 29/8/2023

BARTHY, J.

The appellant Said Hashim had lodged this appeal to challenge the decision of the district court of Kiteto at Kibaya made on 29/5/2019, where he was convicted and sentenced to serve thirty years imprisonment for the offence of unnatural offence contrary to section 154(1) of the Penal Code Cap 16 R.E. 2002.

The appellant aggrieved with that decision, he appealed to this court marshalling seven grounds of appeal. During the hearing the appellant fended for himself and the respondent was represented by Ms. Mbilike Mangweha the learned state attorney.



Before the hearing commenced, the court invited the parties to address it on the competence of this case before this court, since the appeal was filed out of time.

The appellant on his arguments he submitted that, after he was convicted and sentenced by district court of Kiteto, then he was transferred to Arusha prison. He tried to make a follow up of the records of the case to no avail.

He informed this court that he was recently supplied with the records of the trial court, then he filed this appeal before this court. However, the appellant had no proof for the same.

For the respondent side, Ms. Mangweha had argued that, the appeal has been filed out of time after the lapse of 45 days required by the law. She pointed out that, the proceedings of the court were ready before the court from 24/6/2019; but this appeal was filed on 17/4/2023 about four years later.

She further stated, the arguments advanced by the appellant were not justified. Hence, she sought this appeal is incompetent before this court.



Having heard the arguments of both sides, on matters of appeal, the provision of section 361(1)(b) of the Criminal Procedure Act, Cap 20 R.E. 2022 (the CPA) provides;

(1) Subject to subsection

(a) ...

(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.

The law is clear that, the appeal has to be lodged within 45 days from the date the impugned decision has been delivered. Should the party wait for the copies of the impugned decision or proceedings, the waiting time shall be excluded from computation. See the case of **Director of Public Prosecutions v. Steere Temanao & Others**, (Criminal Appeal 691 of 2020) [2022] TZCA 799 (6 December 2022).

I have closely examined the records before this court; however, the appellant did not have any proof he was waiting for the records of the



trial court as he claimed and when he was supplied with the same. It is therefore clear that, the petition of appeal was filed out time.

The appellant lodged his appeal after the lapse of 45 days and there was no leave sought to this court to file his appeal out of time. The emphasis of seeking leave of the court was held in the case of **Mawazo Saliboko @Shagi and 15 other v. DPP**, Criminal Appeal No. 384 of 2017, Court of Appeal at Tabora (unreported).

The court may extend time to file the appeal out of time, upon application of the party if there is good and sufficient cause to extend the same. As provided under section 361 (2) of the CPA.

The appellant has casted the blame to the prison officer to have transferred him to another prison without having been supplied with the records of his case.

However, those reasons do not negate the fact that his appeal was lodged out of time without any leave prior sought. In the event, from the foregoing reasons I find that this appeal is incompetent and the only remedy is to struck it out.



It is so ordered.

DATED at **Babati** this 29th August, 2022.



G.N. BARTHY

JUDGE

Delivered in the presence of the appellant in person and Ms. Mbilike Mangweha the learned state attorney.