

**IN THE HIGH COURT UNITED REPUBLIC OF TANZANIA**

**(MOROGORO SUB-REGISTRY)**

**AT MOROGORO**

**CRIMINAL APPEAL NO. 01 OF 2022**

*(Originating from the Judgement of the District Court of Kilombero, at Ifakara in Economic Case No. 06 of 2020).*

**PATRICK KISOMA ..... APPELLANT**

**VERSUS**

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

**JUDGEMENT**

31<sup>st</sup> August, 2023

M. J. CHABA, J.

This appeal stems from the decision of the District Court of Kilombero, at Ifakara (the trial Court) in Economic Case No. 06 of 2022, where the appellant, Patrick Kisoma was aligned before the trial Court and charged with the following two Counts, namely; 1<sup>st</sup> Count: Unlawful possession of a Firearm contrary to Section 20 (1) (b) and (2) of Act, No. 2 of 2015 read together with paragraph 31 of the First Schedule to, and sections 57 (1) and 60 (2) of the Economic and Organised Crime Control Act, [CAP. 200 R. E, 2019], as amended by the Written Laws (Miscellaneous amendments) Act No. 3 of 2016.

The 2<sup>nd</sup> Count: Unlawful possession of the Government trophies contrary to Section 86 (1) and (2) (c) (iii) and 3 of The Wildlife Conservation Act, No. 5 of 2009 [CAP. 283 R.E. 2019] as amended by the Written Laws (Miscellaneous Amendments) Act No. 4 of 2016 read together with paragraph 14 of the First Schedule to, and Sections 57 (1) and 60 (2) of the Economic and Organized Crime Control Act, [CAP. 200 R. E, 2002] as amended by The Written Laws (Miscellaneous amendments) Act No. 3 of 2016, now [R. E, 2022].

According to the Court record, when the police officers completed to investigate the matter, this case was placed before the trial Resident Magistrate on the 26<sup>th</sup> day of August, 2021 where the charge against the appellant / accused was read over and fully explained to him in his own language he understood better (Swahili) and pleaded guilty to all two Counts he stood charged and subsequently, on the 27<sup>th</sup> August, 2021 he was found guilty by the trial Court, convicted and sentenced to serve twenty (20) years in jail for each offence. His sentence was ordered to run concurrently.

Disgruntled by the trial Court decision, on 19<sup>th</sup> January, 2022 the appellant through the assistance of the Officer In-charge at Kiberege Prisons, preferred the instant appeal armed with five grounds of appeal

but coached in a layman language. However, for reasons to be apparent in due course, I shall not reproduce the said grounds of appeal.

At the hearing of the appeal on 6<sup>th</sup> March, 2023, the appellant appeared in person and fended for himself, whereas the Respondent / Republic was represented by Ms. Theodora Mlelwa, Learned State Attorney.

Before embarking into the parties' submissions, I had ample time to peruse the trial Court proceedings, the impugned judgment and the entire Court records. In the course, I noted a serious irregularity affecting the competence of the instant appeal in as much as the provision of section 361 (1) (b) of the Criminal Procedure Act, [CAP. 20 R. E, 2022], (the CPA) on the time limits to lodge an appeal to this Court against the decision of the Resident Magistrates Court and District Court is concerned. For ease of reference and clarity, I find it proper to reproduce the section as hereunder: -

*"Section 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 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.*

From the above interpretation of the law, it is settled law that, in computing the period of time limit to appeal, the period the aggrieved party awaited to be supplied with the copy of judgment is to be automatically excluded. This stance of law has also been provided for under section 19 (2) of the Law Limitation Act, [CAP. 89 R. E, 2019] which articulates that: -

*"In computing the period of limitation prescribed for an appeal, an application for leave to appeal, or an application for review of judgment, the day on which the judgment complained of was delivered, and the period of time requisite for obtaining a copy of the decree or order appealed from or sought to be reviewed, shall be excluded."*

Returning to the matter at hand, it is an uncontroverted fact that the decision sought to be appealed against was delivered on the 27<sup>th</sup> August, 2021 and the appellant lodged his petition of appeal in this Court on 15<sup>th</sup> December, 2021 which is almost four months from the date of the delivery of the impugned judgment. Applying the above provision of the law to the

matter at hand, it is apparent that, the clock of time limits ought to have started to run against the appellant from the date he was supplied with the copy of judgment. However, the appellant ought to have enjoyed the said automatic exclusion of time only if, sufficient evidence would have been submitted in Court and or annexed to the petition of appeal to prove the dates of the critical events for the reckoning of the prescribed limitation period, which includes the date of delivery of delivery of the impugned decision, the date on which a copy of the decree or judgment was requested and the date of the supply of the requested documents.

This principle of law was elucidated by our Supreme Court in the case of **Alex Senkoro & Others Vs. Eliambuya Lyimo (Criminal Appeal 16 of 2017) [2021] TZCA 104 (13 April 2021)** (Extracted From [www.tanzlii.org](http://www.tanzlii.org)), where the Court of Appeal of Tanzania observed thus: -

*".....Furthermore, this Court took a similar standpoint in two recent decisions where the proviso to section 379 (1) (b) of the Criminal Procedure Act, Cap. 20 R.E. 2002 [now R.E. 2019], an analogous exclusion stipulation, was considered: Director of Public Prosecutions v. Mawazo Saliboko @ Shagi & Fifteen Others, Criminal Appeal No. 2017; and Samuel Emmanuel Fulgence v. Republic, Criminal Appeal No. 4 of 2018 (both unreported). To illustrate the point, we wish to extract what we said in*

*Mawazo Saliboko @ Shagi & Fifteen Others {supra} where the learned High Court Judge had decided that the exclusion was not automatic:*

*"The learned Judge was of the view that, though the appellant filed the appeal within 45 days after being served with the copy of the proceedings, he ought to have applied for extension of time to do so because he was time-barred from the date of the impugned decision. On our part, we are of the decided view that the intention of the legislature under the proviso to section 379 (1) (b) of the CPA was to avoid multiplicity of, and delay to disposal of cases. That is why it provided for automatic exclusion of the time requisite to obtain a copy of proceedings, judgment or order appealed from, this is different where the intending appellant finds himself out of 45 days to file an appeal after receipt of the copy of proceedings. "[Emphasis added]*

The CAT went further and expounded that:

*"We need to stress what we stated in the above case that **the exclusion is automatic as long as there is proof on the record of the dates of the critical events for the reckoning of the prescribed limitation period.***



*For the purpose of section 19 (2) and (3) of the LLA, these dates are the date of the impugned decision, the date on which a copy of the decree or judgment was requested and the date of the supply of the requested document.” [Emphasis added].*

In the instant appeal, although the appellant had into his mind that, he was out of the prescribed period of time to lodge his petition of appeal, he didn't bother to attach or annex the relevant documents at least to prove that on a particular date he wrote a letter to the trial Court requesting for the copies of the judgment and proceedings, and that such document(s) were supplied to him, stating the date, so as to be covered by the law under the auspices of automatic exclusion.

In this regard, it goes without saying that in absence of such proof, it is safer to conclude that, the appellant was supplied with the copy of judgment on the 27<sup>th</sup> August, 2021 when the same was stamped with the Court Seal and signed by the learned trial Magistrate. This view was enunciated by the CAT in the case of **Samuel Emmanuel Fulgence Vs. Republic (Criminal Appeal 4 of 2018) [2019] TZCA 380 (8 November 2019)** (Extracted from [www.tanzlii.org](http://www.tanzlii.org)), where upon being faced with akin situation, the CAT had the following to state:

*"...That apart, the petition of appeal was filed on 26<sup>th</sup> day of February, 2016. In reckoning the forty-five days within which to lodge an appeal, the time requisite for obtaining a copy of the proceedings and judgment will be excluded. The record is silent as to when the proceedings were ready for collection. Nonetheless, the judgment of the Resident Magistrate Court was certified and was ready for collection on 28<sup>th</sup> day of October, 2015. The period from the date of acquittal of the appellant, that is, 21<sup>st</sup> day of August, 2015 to the date the certified copy of the judgment was ready for collection, that is, 28<sup>th</sup> day of October, 2015, is excluded in computing the forty-five days. As such the respondent ought to have filed its appeal latest on 13<sup>th</sup> day of December, 2015. It follows then that the petition of appeal filed on 26<sup>th</sup> day of February, 2016 was filed out of time. The High Court ought not to have entertained the appeal as it was time-barred".*

From the above discussion, it is my holding that this appeal is incompetent before this Court for being filed out of time and without obtaining leave of the Court. As to the way forward, I have sought guidance from the holding in the case of **Said Shaibu Mwigambo vs Republic (Criminal Appeal 420 of 2021) [2023]TZCA 148 (28**



**March 2023)** (Extracted from www.tanzlii.org), where the Court of Appeal held inter-alia that:

*"We agree with the learned State Attorney that all being equal, the delayed filing of the petition of appeal had the effect of rendering the appeal incompetent. The court was barred from entertaining an incompetent appeal for, it was as good as none had been instituted in the first place. The court could only make an order striking it out instead of dismissing as it did..."*

In upshot, and for reasons stated above, I hereby struck out this appeal on the ground of being time barred. I so order.

**DATED at MOROGORO** this 31<sup>st</sup> day of August, 2023.



M. J. CHABA

**JUDGE**

**31/08/2023**

**Court:**

Judgement delivered under my Hand and the Seal of the Court this 31<sup>st</sup> day of August, 2023 in the presence of Mr. Shabani A. Kabelwa, Learned State Attorney who appeared for the Respondent / Republic and in absence of the appellant.

  
M. J. CHABA

**JUDGE**

**31/08/2023**

**Court:**

Right of Appeal to the parties fully explained.

  
M. J. CHABA

**JUDGE**

**31/08/2023**