

IN THE HIGH OF THE UNITED REPUBLIC OF TANZANIA

DAR ES SALAAM DISTRICT REGISTRY

AT DAR ES SALAAM

CRIMINAL APPEAL NO.110 OF 2022

(C/f Economic Case No.9/2015 in the Resident Magistrates Court of Dar Es Salaam at Kisutu)

DIRECTOR OF PUBLIC PROSECUTIONS.....APPELLANT

Vs

MOHAMMED SULEIMAN MUSA.....1ST RESPONDENT

MOHAMED HAJI HAJI @ UDOLE.....2ND RESPONDENT

JUMA ALI MAKAME.....3RD RESPONDENT

MOHAMED HIJA MASHAKA.....4TH RESPONDENT

OMARY HAMAD ALLY.....5TH RESPONDENT

RULING

Date of last Order: 21-8-2023

Date of Ruling: 28-8-2023

B.K.PHILLIP,J

This ruling is in respect of a point of preliminary objection raised by the learned Advocate Agnes Nduyepo who appeared for the respondents in this appeal, to wit; That this appeal is time barred. The learned Senior State Attorney Hellen Moshi appeared for the appellant.

Briefly, the background to this appeal is that the respondents herein were arraigned at the Resident Magistrates' Court of Dare Salaam at Kisutu of three counts, the first one being Conspiracy to commit an offence contrary

to section 284 of the Penal Code, 2nd count Leading Organized Crime contrary to paragraph 4 (1) (a) of the first schedule to section 57 (1) and 60 (2) both of the Economic and Organized Crime Control Act, (Cap 200 R.E 2002),third count was Unlawful Possession of Government Trophies Contrary to section 86 (1) and 2 (c) (ii) of the Wildlife Conservation Act No.5/2009 read together with paragraph14 (d) of the first Schedule to and section 57 (1) both of the Economic and Organized Crime Control Act (Cap 200 R.E2002).The case was heard on merit. The trial court's judgment was delivered on 21st March 2022 in which it acquitted all respondents. On 23rd March 2022, the appellant herein lodged its notice of intention to appeal and this appeal was lodged in this court on 28th June 2022.

When this appeal was called for hearing the learned Advocate Agnes Ndusyepo raised the point of preliminary objection stated at the beginning of this ruling. In her submission in support of the point of preliminary objection she argued that section 379 of the Criminal Procedure Act ("CPA") provides that an appeal against the judgment of the Resident Magistrate's Court has to be filed within forty five (45) days from the date of the judgment. He added that the law also provides that the days spent in obtaining the copy of the judgment and proceedings are excluded in the computation of the aforesaid forty five (45) days for filing the appeal. She further contended that in this appeal the copy of the judgment and proceedings in respect of this appeal was supplied to the appellant on 5th April 2022 and 5th May 2022 respectively.She went on submitting that counting from 5th April 2022, the date of on which the

appellant received the copy of the proceedings to 28th June 2022, the date of filing this appeal more than eighty (80) days lapsed and counting from 5th May 2022, the date of receipt of the copy of proceedings by the appellant to the date of filing this appeal, more that 53 days lapsed thus, she maintained that this appeal is time barred pursuant to section 379 of the CPA. In conclusion of her submission she urged this court to dismiss this appeal for being time barred.

In rebuttal Ms. Moshi, conceded that by 5th May 2022 the copy of proceedings were ready for collection and pointed out that the forty five (45) days for filing the appeal are reckoned from the date of obtaining the copy of the proceedings. She contended that counting from 5th May 2022 to the date of filing this appeal that is, 28th of June 2022 excluding the week-ends less that forty five (45) days lapsed thus, she maintained that this appeal is filed within the time prescribed by the law. She insisted that in computing the forty five (45) days for filing the appeal, week-ends are supposed to be excluded because they are not working days and the court does not work on week-ends. In short, she emphatic that this appeal is not time barred. She implored this court to dismiss the point of preliminary objection.

In rejoinder, Ms. Nduyepo reiterated her submission in chief. She was emphatic that there is no law which provides that week-ends should be excluded in computation of the days for filing an appeal.

It is a common ground that appeal from the judgment of the Resident Magistrate's court have to be filed within forty five (45) days from the date

the impugned judgment/ruling. However, the days spent in obtaining the copy of proceedings, Judgment, ruling or order appealed against are excluded. The issue for determination in this ruling is straight forward, that is, whether in counting the days for filing an appeal week-ends are supposed to be excluded?. This issue should not detain me because the position of the law on this issue is clearly provided in section 379 (1) (b) of the CPA, that is, the days which are supposed to be excluded in computation of the time limit for filing an appeal are the ones spent in obtaining the copies of proceedings, judgment or order appealed against and not otherwise. For easy of understanding let me reproduce here under the section 379(1) (a) (b) of the CPA;

"Section.379 (1)- Subject to subsection(2) , no appeal under section 378 shall be entertained unless the Director of Public Prosecutions or a person acting under his instructions:

- (a) Has given notice of his intention to appeal to the subordinated Court within thirty days of the acquittal, finding , sentence or Order against which he wishes to appeal and the notice of appeal shall institute the appeal; and*
- (b) Has lodged this petition of appeal within forty five days from the date of such acquittal, finding, sentence or Order; **save that in computing the said period of forty five days the time requisite for obtaining a copy of the proceedings , judgment or order appealed against or of the record of proceedings, judgment or order appealed against or of the record of proceedings in the case shall be excluded".***

(emphasis is added)

No wonder Ms. Moshi did not cite any law or case law to support her assertion as there is none.

From the foregoing it is the finding of this court that Ms. Moshi's assertion that week-ends should be excluded in computation of the days for filing an appeal is misconceived. As correctly submitted by Ms. Nduyepo, counting from 5th May 2022 to 28th June 2022, the date on which this appeal was filed, more than 53 days lapsed thus, this appeal is time barred. Consequently, I hereby dismiss this appeal for being filed out of time without the leave of this court. It is so ordered.



Dated this 28th day of August 2023


B.K.PHILLIP

JUDGE