

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE SUB- REGISTRY OF MANYARA**

AT BABATI

CRIMINAL APPEAL NO. 1641 OF 2024

(Originating from conviction and sentence in Criminal Case No. 67 of 2022,
Mbulu District Court)

JOSHUA BALKI.....APPELLANT

VERSUS

REPUBLICRESPONDENT

RULING

3rd June, 2024

D. C. KAMUZORA, J.

The Appellant was arraigned before the district court of Mbulu (herein referred as the trial court), charged with one count of unnatural offence contrary to section 154, (a) and (2) of the penal code CAP 16 RE 2022]. It was alleged that on 11/5/2022 at Dongobesh village the Appellant had carnal knowledge with the girl aged 6 years against the order of nature. The Appellant pleaded not guilty. After a full trial the Appellant was convicted and sentenced to life imprisonment.

Aggrieved with the conviction and sentence meted out against him, the Appellant filed the instant appeal with ten grounds of appeal which I will not reproduce for the reason that will be apparent shortly.

When the appeal was called for hearing, the Appellant appeared in person while the Respondent was represented by Mr. Ndibalema, learned

State Attorney. The learned State Attorney raised a concern that the appeal was filed out of the prescribed time contrary to section 362 of the Criminal Procedure Act [Cap 20 RE 2022], (hereinafter referred to as the CPA). He argued that, the judgment was delivered by the trial court on 18/08/2022 and the Appellant filed a notice of intention to appeal on 11/08/2022. He pointed out that the appeal was supposed to be filed within 45 days counted from 11/08/2022 but the appeal was filed on 19/01/2024. In a brief reply, the Appellant claimed that he was not supplied with the copy of the judgment timely.

Having considered the parties' rival submissions, the sole issue for my determination is whether the appeal is time barred. It is not in dispute that the trial court's decision was delivered on 11/8/2022. In terms of section 362 of the CPA the Appellant was required to file the appeal within 45 days from the date of the judgment. For that reason, the appeal should have been filed on or before 26/9/2022 but it was filed on 19/01/2024 after expiry of more than 15 months.

I have considered the Appellant's arguments that he was not supplied timely with the copy of the judgment. However, the record shows that, the impugned decision was delivered and certified on the same date on 11/8/2022. The record itself suggest that the copy of the decision was ready for collection on the same date. If the Appellant claim delay in

supply of necessary documents, that need a justification which cannot be done at this stage rather through an application for extension of time. Although the Appellant indicated on the last page of the petition of the appeal that he received the copy of the judgment on 8/12/2023, that need justification and as I have said earlier, the same can only be justified in an application for extension of time.

I understand that in terms of section 361 (1)(b) of the CPA, the time required to obtain the copy of the proceedings, judgment or order appealed against is excluded. This provision has been interpreted in a number of decisions that such exclusion is automatic provided that there is proof on the date the requested documents were supplied. The circumstance in this case do not empower this court to apply exclusion rule in excluding the time used to obtain necessary documents because the records are not clear as to when the copies were either requested for and, or supplied to the Appellant to justify filing an appeal after 15 months from the date the decision was delivered. The delay needs to be explained and that cannot be done in this appeal.

In the case of **The Director of Public Prosecutions vs Mawazo Saliboko @ Shagi & 15 others** Criminal Appeal No. 384 Of 2017 Court of Appeal of Tanzania at Tabora (unreported), The Court of Appeal observed thus;

"Thus, from these decisions what is important is proof of the date of the decision, the date when the copy of the proceedings was applied for and the date when the same was supplied to the intending Appellant."

[Emphasis added].

Guided by the above decision, and in considering that records are not clear on the date the copies of necessary documents were applied for and, or supplied by the trial court, the Appellant cannot have an automatic exclusion of time envisaged under section 361 of the CPA. Since the appeal was filed after lapse of 15 months from the date of the decision, this court finds that, the appeal was filed out of the period prescribed by the law and it is accordingly struck out.

DATED at BABATI this 3rd Day of June, 2024.



D. C. KAMUZORA

JUDGE