

IN THE HIGH COURT OF TANZANIA

TANGA SUB-REGISTRY

AT TANGA

CRIMINAL APPEAL NO. 73 OF 2023

*(Arising from the Judgment in Economic Case No. 7 of 2022 from
Korogwe District Court)*

ALLY ATHUMANI NGAIRE APPELLANT

VERSUS

THE REPUBLIC..... RESPONDENT

RULING

K. R. Mteule, J

16/4/2024 & 19/4/2024

This Ruling addressed an issue raised by learned State Attorney for the Republic on the timeliness of the filing of Written Submissions by the parties. As a brief history to elucidate the genesis of the matter, Ally Athumani Ngaire (The Appellant) is aggrieved by the decision of the District Court of Korogwe at Korogwe (the trial Court), in **Economic Case No. 7 of 2022**. In the trial Court, the instant Appellant and one Miraji Rashid Mohamed who is not a party in this appeal stood charged with Unlawful Possession of Government Trophy contrary to **section 86 (1) and (2) (c) (ii) and (3) (b) of the Wild Life Conservation Act No. 05 of 2009** read together with **paragraph 14 of the First Schedule to Section 57 (1) and 60 (2) of the Economic and**

Organized Crime Control Act (Cap 200 R.E. 2019). The second accused person was acquitted having been found with no case to answer. The Appellant was found guilty and sentenced to serve twenty years in prison. Being aggrieved by the conviction and sentence, the appellant preferred the instant appeal asserting error in the decision of the Trial Court basing on four grounds which can be paraphrased into the following points; -

1. Lack of Impartial witness to the searching and seizing exercises.
2. Trial Court reliance on cooked evidence of Prosecution witnesses.
3. Unestablished chain of custody of the exhibits
4. The case against the appellant not proved beyond reasonable doubt.

In this Appeal the Appellant appeared in person and the Republic being represented by Ms. Jasca Thomas, State Attorney. On 19th March 2024, this Court ordered for the Appeal to be argued by a way of written submissions. The Appellant was supposed to file his submission on 26th March 2024 and the Respondent by 2nd April 2024.

When the matter was called on 16th April 2024 for checking with the compliance to the schedules, the Respondent's Attorney raised an issue on the timeliness of filing of the written submissions. He faulted the appellant for having filed his written submissions out of time fixed by the order of the court. According to Mr. Rugaimukamu SA, it was due to this Appellant's fault that caused the Respondent to as well lodge his submission out of time. The Appellant did not dispute the late filing of

his written submission but gave an excuse that he was not supplied with the trial court proceedings timely, something which constrained him in preparing his submissions within time. The learned State Attorney rejoined that the late supply could have been a ground to request extension of time and not to file the submission out of time without the leave of the court.

Having considered the rival submissions, I agree with the Appellant on one point that late supply of proceedings constitutes a sufficient ground for late filing. (See **Section 19 (2) of the Law of Limitation Act [Cap 33 RE 2019]** and the case of **Methusela Enoka vs National Microfinance Bank Ltd**, Civil Appeal No. 266 of 2019, CAT at Mwanza at page 10). It is so settled since the time spent in applying and waiting for the record may be deducted from the time computation. However, I have view that this is applicable where the time limit is by the number of days provided for a certain action to be taken which is distinct from when the Court specifies a specific date for an action to be taken. In the instant matter the time limit was a specific date set by the court. In this circumstance, it is not known how the deduction of the days passed pending the supply of the proceedings can be done. The submission was to be filed on a specific date set by the court.

From what is stated above, I agree with the learned State Attorney that the late supply of record for a matter which had a specific time of action ought to be used as a ground to seek extension of time and not an excuse for late filing of the submission in defiance of court order.

It is on this regard; I find the Appellant's submission to have been illegally filed in court for having been filed out of the time prescribed by the court. As such the Submission is therefore disregarded.

Having disregarded the Respondent's submissions, I have noted that even the Learned State Attorney for the Respondent stated that he filed his submissions out of time due to having been served out of time. As stated above, since there was a specific time to file the submission, however good the reason of delay may be, there should have been an application for extension of time. This is because the filing of the submissions by both parties was in compliance with the court order which set a specific date of filing. As well the Respondent's submissions were filed late. Equally, the said submissions by the Respondent shall be disregarded.

Since both submissions are now disregarded, the question which remains is what will be the status of the Appeal when none of the parties have reliable submissions to argue it. The consequences of failure to file submissions have been a subject of discussion in the Court of Appeal. Although the Court of Appeal has been expounding on this matter basing on the Court of Appeal Rules which are not applicable in this court, in my view, still decisions on the Court shall always have a binding effect into all the courts. The High Court and subordinate courts cannot go contrary to the principles applicable in the Court of Appeal if there is no specific law providing for a contrary situation in the lower courts. This being the case, I will be guided by the jurisprudence of the Court of Appeal on this matter.

In the case of **UAP Insurance TZ Limited vs Noble Motors Limited Civil Application No. 260 of 2016, CAT at Dar es Salaam**, the Court of Appeal found failure to file submissions as an omission which does not stop the determination of the matter. The Court has been determining matters basing on the information already available in court record where no submissions filed at all. (See also **Msafiri**

**Pharmaceuticals and Associates Limited vs Shellys
Pharmaceuticals Limited Civil Appeal No 44 of 2012, CAT).**

From the principle derived from the above authorities which is applicable to the Court of Appeal, I will also follow the suit and determine the Appeal basing on what is available on record. In record, the only thing which validly remains is the grounds of appeal filed herein. I will therefore determine this appeal basing only on the grounds of appeal. It is so ordered.

Dated at Tanga this 19th April 2024.



KATARINA REVOCATI MTEULE

JUDGE

19/4/2024

Court:

Ruling delivered this 19th day of April 2024 in the presence of the Appellant in person and Mr. James Rugaimukamu, Learned State Attorney for the Respondent.



KATARINA REVOCATI MTEULE

JUDGE

19/4/2024