

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF MANYARA

AT BABATI

CRIMINAL APPEAL No. 9 OF 2022

(Originating from Criminal Case No. 66 of 2021 from Resident Magistrate Court of Manyara at Babati)

BARAKA LAURENT..... APPELLANT

VERSUS.

THE REPUBLIC.....RESPONDENT

Date: 7/12/2022

BARTHY, J.

RULING

Before me it is an appeal arising from the decision of the Resident Magistrate Court of Manyara at Babati from Criminal Case No. 66 of 2021. The appellant before the trial court was indicted with one count of unnatural offence C/S 154(1) (a) and (2) of the Penal Code, [Cap. 16 R.E 2019]. Upon the case being heard, the appellant was convicted and sentenced to life time jail term.

The appellant Baraka Laurent being dissatisfied with the decision of the trial court lodged the petition of appeal advancing five grounds before this court.

On the first day of hearing, the appellant appeared in person and the respondent was represented by Ms. Grace Mgaya, the state attorney.

Before the court was set to hear the appeal on merit, the court learned that the dates on the records accompanying the petition appeal was altered to read 11th of October, 2022 to be the date the copy of the proceedings to have been supplied to the appellant who was in prison.

Whereas, the date on the petition of appeal shows that the copy of the proceeding was received on 20th September 2022.

With that hint that the petition of appeal would have been filed out of time, but the dates were changed to suit the intention to show that the appeal was filed within time. The court therefore invited the parties to address the court on the issue of dates and time of lodging the appeal.

The appellant was called to address the court first, on his brief submission he informed the court that he was supplied with the copy of the proceedings on June, 2022 on the date he did not recall. He went on to state that he had not sought the leave of this court for extension of time to file the appeal out of time. He went further to state that, he did not have anyone to make follow up of his appeal, but he claimed to have not been aware the dates were altered.

Ms. Mgaya the state attorney, on her submission she argued that, this appeal was filed before this court on 24th November, 2022 whereas the copies of the proceedings shows that they were typed on 25th April 2022. She added, the copy of the proceedings show they were altered to indicate it was received by the appellant on 11th of October 2022 instead of 20th of September 2022 which is shown on the petition of appeal.

She went further to argue that, the appeal was filed after the lapse of 45 days from the time the copies of proceedings and judgment were dully supplied to the appellant.

She made reference to section 376(1)(b) of the Criminal Procedure Act, Cap 20 R.E. 2022 which requires the appeal to be filed within 45 days. She further contended that; the records supplied to the respondent shows no leave of the court was granted to extend time to file this appeal. Hence, she prayed the appeal be struck out.

The appellant on his rejoinder submission he maintained his argument as stated in his submission in chief.

Taking on board the arguments of both sides and the records on this appeal, it is the requirement of the law that the petition of appeal has to

be filed within forty-five days from the date of its decision or the last date from obtaining the decision appealed and its proceedings.

The same is provided under section 361(1)(b) of the Criminal Procedure Act, Cap 20 R.E. 2019 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.

Having gone through the arguments of both sides and the provision of the law, I have closely scrutinized the records before this court and it is clear that the petition of appeal was filed out time. However, its pity to find that the records were altered to lie to this court that the petition of appeal was filed within time; while it was filed before this court after the lapse of 45 days.

The appellant has only raised the defence that he did not have anyone to help him make follow up and he claimed to have no clue the dates

were altered. It is however clear that, the appellant did not obtain leave of this court to file the appeal out of time as stated on his submission.

Having in mind that those dates were not contested and the appellant has not sought any leave for extension of time to file his appeal out of time, the position of the court on matters like this has been settled, as decided in the case of **Mawazo Saliboko @Shagi and 15 other v. DPP**, Criminal Appeal No. 384 2017, CAT at Tabora (unreported) where the court among other things held that the appeal must be filed within prescribed time, unless the leave has been granted to file the same out of time.

In those circumstances, I am in agreement with Ms. Mgaya the state attorney that, the provision of the law clearly requires the appeal to be filed within 45 days after the decision is made or being supplied with the copy of the proceedings and judgment. 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 7th December, 2022.



G.N. BARTHY

JUDGE

7/12/2022

Delivered in the presence of the appellant in person and Ms. Grace Mgaya the state attorney.