

TANZANIA / JUDGMENT

Judgment Peter Thadey

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA IN THE SUB-REGISTRY OF
MANYARA AT BABATI CRIMINAL APPEAL NO. 7791 OF 2024 (Originating from Criminal Case No.
57 of 2023 before Babati district court at Babati) PETER THADEI
PETER.....APPELLANT VERUS THE REPUBLIC
RESPONDENT

JUDGMENT

if & 2(fh June, 2024 Kahyoza, J.: Peter Thadei Peter (the appellant) was charged with an offence of trafficking narcotic drugs contrary to Section 15A (1) of the Drugs Control and Enforcement Act, [Cap. 95 R.E 2019] (the DCEA). After full trial, the court convicted and sentenced the appellant to serve thirty years' imprisonment. Aggrieved, the appellant appealed against the conviction and sentence. Mr. Ndibalema, the state attorney appeared for the respondent and opposed the appeal vehemently. To him the appeal had no merit. Before he argued in opposition of the appeal Mr. Ndibalima raised a preliminary objection that the appeal was filed out of time. He submitted that the trial court delivered the judgment on 8.11.2023 and supplied a copy of the judgment to the parties on 9.11.2023. He added that the trial court supplied a copy of the proceedings to the parties on 7.12.2023 and that the appellant lodged the appeal on 22.3.2024. Thus, the appellant delayed for 29 days. The appellant opposed the preliminary objection by contending that he was supplied with a copy of the proceedings on 25.2.2024, hence he appealed within time. Is the appeal time barred? It is settled that time commences to run against a person intending to appeal from the date of receipt of a copy the judgment and proceedings. See section of the Criminal Procedure Act, [Cap.20 R.E. 2022] (the CPA). I examined on record to find out when the appellant was supplied with a copy of the judgment and proceedings. Unfortunately, the record is silent. No one can tell with certainty when the appellant was served with a copy of the judgment and proceedings. The respondent's contention that the appellant was supplied with a copy of the proceedings on 7.12.2023 has no proof. It is a mere speculation. The record has it that the trial court certified the proceedings on 7.12.2023 but there is no evidence that the appellant got a copy on the very day. On the same vein, I do not buy the appellant's contention that he was given a copy of the proceedings on 7.12.2023 established. The appellant gave no proof of his contention that he obtained a copy of the proceedings on 7.12.2023. In addition, I am not convinced that the court took two months from the date it certified the proceedings to supply a copy to the appellant. Since, I am in doubt as to the date the appellant obtained a copy, I find in favour of the appellant

that he obtained a copy on 25.2.2024, hence the appeal is within time. Did the prosecution prove the appellant guilty beyond reasonable doubt? The appellant did not elaborate his grounds of complaint. On the respondent's part, Mr. Ndibalema, learned state attorney submitted that there was ample evidence to ground the appellant's conviction. He contended that much as an independent witness did not testify, the prosecution tendered his statement under section 34B(2) (a) of the Evidence Act, [Cap. 6 RE. 2022]. He added that the appellant did not object to the prayer to tender the statement. He vehemently opposed the appellant's complaint that the prosecution did not prove his guilty beyond reasonable doubt. He argued that there were ample evidence as the trial court demonstrated at pages 6 and 7 of the judgment. He prayed the appeal to be dismissed for want of merit. A brief background is that, on 18.2.2023 while on duty at Minjingu police road block, the police officers stopped a min-bus, commonly referred to as Coater. They ordered all passengers to disboard. Passengers obliged. Police searched inside the bus and found nothing to raise eyebrows. However, the appellant was found with a bag, upon searching his bag, it was found with 900 grams of cannabis sativa commonly known as bhang. Police officers arrested and charged him as depicted. To prove him guilty, the prosecution summoned 9 witnesses, to wit; G 3942 CPL Innocent (Pw1), a police officer who recorded the appellant's caution statement, F 2449 Sgt James (Pw2) the exhibit keeper who received the bag from A/Insp. Karata (Pw5) the arresting officer, 1317 D/CPL Lelo (Pw3) who took the exhibit to the government chemist and H 146 CPL Thomas (Pw4) who was among the police officers who arrested the appellant. The prosecution summoned H 8025 CPL Nuru (Pw6) the investigator and 8504 D/CPL Stella (Pw7) who tendered the statement of an independent witness under section 34B of the Evidence Act. The appellant on his part denied to commit the offence. Indisputably, the prosecution did not summon the government analyst to tender the report. It was 1317 D/CPL Lelo (Pw3) who tendered the report. No doubt that this being the first appellate court, it is bound to review the evidence on record. I opted to examine the charge sheet first to see if the appellant was properly charged. The appellant was charged with the offence trafficking in narcotic drug under section 15A of DECEA. The term trafficking has been defined under section 1 of the Act as follows: "trafficking " means the importation, exportation, manufacture, buying, sale, giving; supplying storing , Possession, administering; conveyance, delivery or distribution, by any person of narcotic drug or psychotropic substance any substance represented or held out by that person to be a narcotic drug or psychotropic substance or making of any offer..." From the definition, trafficking a technical term. The appellant had a right to know the nature of the offence he stood charged. The prosecution had a duty to ensure the charge did not contain technical terms so that the appellant may comprehend the charges against him. Section 132 of the CPA, imposes a duty to the prosecution give particulars as to the nature of the offence. It states- "Every charge or information shall contain, and shall be sufficient if it contains, a statement of the specific offence or offences with which the accused person is charged together with such particulars as may be necessary for giving reasonable information as to the nature of the offence charged." (Emphasis added) In addition section 135 (a) (ii) of the CPA requires the prosecution to prescribe the nature of the offence in ordinary language avoiding as far as possible the use of technical terms. It states- "The statement of offence shall describe the offence shortly in ordinary language avoiding as far as possible the use of technical terms and without necessarily stating all the essential

elements of the offence and, if the offence charged is one created by enactment, shall contain a reference to the section of the enactment creating the offence;" (Emphasis added) The Court of Appeal in Hamis Mohamed Mtou v. R., Criminal Appeal No. 228 of 2019, discussing the charge containing the word "trafficking" borrowed leaf from a Kenyan case of Madline Akoth Barasa and Another v. R, Criminal Appeal No. 193 of 2005 [2007] eKLR where it was held that- "In the event, we find that the particulars of the offence did not contain sufficient ingredients of the offence of trafficking in narcotic drugs to have given the appellant enough information of what he was facing so that he could properly plead to it and marshal his defence . Consequently, it is clear therefore, that the appellant pleaded to a fatally defective charge, hence did not get a fair trial rendering the whole trial a nullity. We therefore nullify the proceedings of the trial court."(Emphasis added) In the circumstances, I find that, by the fact that the charge against the appellant contained a term "trafficking" which comprises a number of 6 criminal acts in it, of which the charge ought to have specified. Failure to specify a particular criminal act the appellant committed which amounted to trafficking, it is clear that the appellant was not afforded with particulars containing sufficient ingredients of the offence of trafficking in narcotic drugs. He was therefore, not fairly tried, contrary to Article 13(6)a of the Constitution of the United Republic of Tanzania, 1977 as amended. I also find that the appellant pleaded and defended him against to a defective charge, that could not even be cured by section 388 of the CPA. Therefore, I hereby quash the proceedings and judgment of the Resident Magistrate's Court of Manyara and set aside the sentence meted out. As to the recourse, I find refuge in the case of Paulo Kumburu vrs. R, Criminal Appeal No. 98 of 2016 (unreported), where it was stated that: "Since in this case the charge sheet is incurably defective, implying that it is nonexistent, the question of a retrial does not arise." In fine, I find that the prosecution did not prove the case for want of proper charge as the evidence could not support a defective charge. I uphold the appeal, set aside the conviction and sentence. Consequently, order for the immediate release of Peter Thadei Peter, to be immediately 7 J. R. Kahyoza Judge Court: Judgment delivered in the virtual presence of Mr. Ndibalema S/A for the respondent, and in the absence of the appellant who could not link to virtual court. B/C Ms. Fatina haymale (RMA) present. J. R. Kahyoza Judge 08/ 05/2024

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