

**IN THE COURT OF APPEAL OF TANZANIA
AT TANGA**

(CORAM: MJASIRI, J.A., KAIJAGE, J.A. And MMILLA, J.A)

CRIMINAL APPEAL NO. 67 OF 2016

HAJI IDDI CHANDO APPELLANT

VERSUS

THE REPUBLIC.....RESPONDENT

**(Appeal for conviction and sentence from the Judgment of the
High Court of Tanzania at Tanga)**

(Khamis, J.)

dated 12th day of June, 2015

in

Criminal Appeal No. 6 of 2015

JUDGMENT OF THE COURT

27th June, & 1st July, 2016

KAIJAGE, J.A.:

In the District Court of Korogwe at Korogwe the appellant was arraigned for rape on the basis of which the prosecution sought to prove that on 31st December, 2013 during the evening hours, at Kwamndolwa area within Korogwe District in Tanga Region, the appellant raped one Naisha d/o George, a girl of ten (10) years of age. At the conclusion of the trial, the appellant was

found guilty, convicted and sentenced to thirty (30) years imprisonment. His appeal to the High Court was dismissed, hence this second appeal.

In his memorandum of appeal, the appellant has enlisted five (5) points of grievance.

At the hearing before us, the appellant appeared in person, unrepresented. The respondent Republic had the services of Ms. Rebecca Msalangi assisted by Ms. Mariaclara Mtengule and Mr. Waziri Magumbo, learned State Attorneys.

Before the appeal was heard on its merits, we granted leave to Ms. Rebecca to address us on a jurisdictional issue affecting the competence of the present appeal.

Addressing the issue she raised, Ms. Rebecca asserted, correctly so in our view, that the High Court had no jurisdiction to entertain, as it did, the appellant's first appeal from a decision of the trial District Court without a notice of intention to appeal duly given in terms of section 361(1)(a) of the Criminal Procedure Act, Cap 20 R.E. 2002 (the CPA). The subsequent proceedings taken and the judgment rendered by the High Court are a nullity, she maintained.

Besides, she argued that the present purported appeal which is based on the null proceedings and the judgment of the High Court is incompetent.

On account of the foregoing shortcomings, Ms. Rebecca implored us to strike out the present appeal and invoke our revisional powers under section 4(2) of the Appellate Jurisdiction Act, Cap 141 R.E. 2002 (the AJA) to nullify the proceedings and the judgment of the High Court.

The appellant, on the other hand, readily conceded to the fact that he did not give the requisite notice of his intention to appeal as required by the law, but wondered why this fundamental lapse was not timeously detected by the Republic and the High Court.

On our part we are, with respect, in full agreement with Ms. Rebecca's entire submission on the jurisdictional issue she raised. Our scanning and perusal of the original record of appeal has revealed a conspicuous absence of any indication that the appellant had given orally or in writing his notice of intention to appeal pursuant to the provisions of section 361(1)(a) of the CPA which reads:-

S. 361(1) Subject to subsection (2), no appeal from any finding, sentence or order referred to in section 359 shall be entertained unless the appellant-

*(a) **has given notice of his intention to appeal within ten days** from the date of the finding, sentence or order or, in the case of a sentence of corporal punishment only, within three days of the date of such sentence.*

[Emphasis is ours]

Since it is evident that the appellant did not give his notice of intention to appeal in terms of section 361(1)(a) of the CPA and did not seek, under subsection (2) of the same provision, for an extension of time within which to give such notice out of time, we are satisfied that the appellant's purported appeal to the High Court was illegally entertained. In other words, there was, in law, no valid appeal. On that account, we also find that the proceedings conducted and the resultant decision made by the High Court are a nullity. In consequence thereof, we hold that the present purported appeal arising from

the null proceedings and judgment of the High Court is incompetent and we hereby strike it out.

In the exercise of our revisional powers under section 4(2) of the AJA, we hereby nullify, quash and set aside the proceedings and the decision of the High Court. Upon this determination, the appellant is in effect placed in a position of one who has never appealed to the High Court. However, if it is still desired to pursue the intended appeal before the High Court, the appellant may wish to proceed under section 361(2) of the CPA by applying for an extension of time in the same court.

DATED at **TANGA** this 30th day of June, 2016.

S. MJASIRI
JUSTICE OF APPEAL

S. S. KAIJAGE
JUSTICE OF APPEAL

B. M. MMILLA
JUSTICE OF APPEAL

I certify that this is a true copy of the Original.




P. W. BAMPIKYA
SENIOR DEPUTY REGISTRAR
COURT OF APPEAL