

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

**(CORAM: KILEO, J.A., ORIYO, J.A., And JUMA, J.A.)**

**CRIMINAL APPEAL NO. 407 OF 2015**

**1. OMARY JUMA NG'ITU  
2. SAMWEL MANG'ATI** } ..... **APPELLANTS**

**VERSUS**

**THE REPUBLIC..... RESPONDENT**  
(Appeal from the decision of the Resident Magistrate Court of Dodoma at Dodoma)  
(Lukekelwa- PRM -Ext. J.)

dated the 15<sup>th</sup> day of September, 1998)  
in  
Criminal Appeal No. 2 of 1998

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**ORDER OF THE COURT**

**JUMA, J.A.:**

Today, when the two appellants, OMARY JUMA NG'ITU and SAMWEL MANG'ATI appeared before us to be heard on their Criminal Appeal No. 407 of 2015, we first asked them and Mr. Evod Kyando, the learned State Attorney who appeared for the respondent, to address us on the failure of the appellants to include a copy of a notice under section 361 (1) (a) of the Criminal Procedure Act; Cap 20 (CPA) wherein the two appellants

expressed their intention to appeal against their conviction and the sentence imposed by the District Court of Dodoma (A.R. Mruma – RM) .

The second appellant, SAMWEL MANG'ATI, insisted that in so far as they know, they prepared all the necessary documents to facilitate their appeal to the High Court including that notice. He pointed out that they have so far spent 19 years in prison and it may not be easy to locate that missing notice of their intention to appeal.

The first appellant, OMARY JUMA NG'ITU, agreed with the explanation given by the second appellant.

MR. Kyando, informed the Court that the notice of intention to appeal is also missing from his copy of the record of appeal. He referred us to page 211 of the record, where Mr. Kagaigai, learned State Attorney raised his concern before S.B. Lukekelwa – PRM – Ex. J. who was hearing the first appeal. The first appellate court did not deal with the concern that the two appellants together with Dickson Richard (whose appeal was allowed), did not give a notice of their intention to appeal to the High Court under section 361(1) (a) of the CPA.

For failing to give their intention to appeal to the High Court, Mr. Kyando urged us to invoke our revisional jurisdiction under section 4(2) of the Appellate Jurisdiction Act, Cap. 141 (AJA) to quash and set aside the proceedings of the Criminal Appeal No. 02 of 1998 before S.B. Lukekelwa - PRM – Ex. J. He added that because S.B. Lukekelwa – PRM-Ex. J. had no jurisdiction to hear the first appeal, there can be no second appeal to this Court.

When asked to respond to the position of the law which Mr. Kyando has articulated, the two appellants conceded that their notice is missing and there is nothing they can do if the law is so clear. They urged us to ensure that should they lodge a fresh appeal in compliance with the law, their fresh appeal should be heard expeditiously so that they may also enjoy their freedom because they are due for release by 2017.

On our part, we agree with Mr. Kyando that this appeal is not competently before us. The record on page 197 shows that on 17/10/1997 after A.R. MRUMA – RM had delivered the judgment of the trial District Court of Dodoma in Criminal Case No. 125 of 1997, convicting the appellants and sentencing them accordingly. Their right of appeal was duly

explained. In exercise of that right of appeal, the law under section 361 (1) (a) of the CPA required them to first lodge their intention to appeal within ten days of their conviction and sentencing by the trial District Court.

The record on pages 198-202 shows the two appellants' Petition of Appeal was filed on 21/01/1998. Even the Officer-in-Charge of Prison in Dodoma who certified the appellants' petitions of appeal did not indicate the dates when the appellants filed their respective notice of intention to appeal to the High Court as required under section 361 (1) (a) which states:

*" 361 (1) (a) 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....."*

The tone employed by the above provision is compulsive to the effect that there can be no valid appeal in the High Court if the intending appellant did not give notice of his intention to appeal within ten days of the decision of the trial court. It also means that without a notice of

intention to appeal to the High Court, there cannot be a competent second appeal to the Court of Appeal. This position was also taken by this Court in **Amiri Omary vs. Republic**, Criminal Appeal No. 299 of 2015 (unreported) where the Court stated:

*"... The learned State Attorney is with due respect right about the mandatory duty on intending appellants to file the notice expressing their intention to appeal under section 361(1) (a) of the CPA. In **Sostenes s/o Nyazagiro vs. Republic**, Criminal Appeal No. 12 of 2013 (unreported) this Court emphasized that:*

*... no appeal shall be entertained unless the appellant has, under section 361(1) (a) of the Act, given notice of his intention to appeal within ten days from the date of finding, sentence or order. The ten days limitation applies for all prospective appellants, whether in prison or not. After giving notice, an intended appellant is required, under section 361(1) (b), to file his appeal within forty five days from the date of the finding, sentence or order..."*

In light of the defect we have outlined, we are minded to exercise our power of revision under section 4(2) of AJA. The proceedings of the first appellate court are hereby quashed and set aside. This appeal before us is as a result struck out. The appellants are at liberty to seek an extension of time within which to lodge their appeal to the High Court under section 361(2) of the CPA.

It is so ordered.

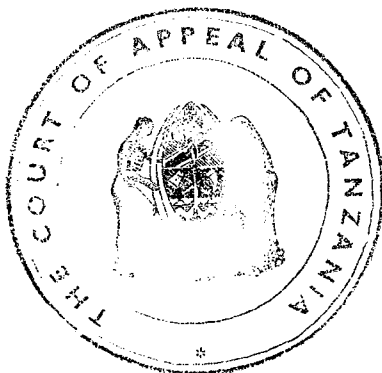
**DATED** at **DODOMA** this 11<sup>th</sup> day of April, 2016.

E.A. KILEO  
**JUSTICE OF APPEAL**

K.K. ORIYO  
**JUSTICE OF APPEAL**

I.H. JUMA  
**JUSTICE OF APPEAL**

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



  
E.F. FUSSI  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**