

IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM
(CORAM: LUANDA, J.A., MMILLA, J.A. And NDIKA, J.A.)

CRIMINAL APPEAL NO. 275 OF 2012

ISSA JUMA KINANDA APPELLANT

VERSUS

THE REPUBLIC RESPONDENT

**(Appeal from the decision of the High Court of Tanzania
at Dar es Salaam)**

(Kaduri, J.)

dated 19th September, 2012

in

Criminal Appeal No. 164 of 2012

JUDGMENT OF THE COURT

28th February & 6th March, 2018

MMILLA, J.A.:

This is a second appeal by Issa Juma Kinanda (the appellant). He had earlier on unsuccessfully appealed to the High Court of Tanzania at Dar es Salaam against the decision of the District Court of Kibaha at Kibaha, before which he was among the two accused persons who were charged with the offence of armed robbery contrary to section 287A of the Penal Code Cap. 16 of the Revised Edition, 2002, as amended by Act

No. 4 of 2004 (sic: Act No. 3 of 2011). After full trial, he was found guilty, convicted, and sentenced to a prison term of 30 years.

The background facts of the case were that, on 11.2.2009 around 20:00 hours, a group of bandits stormed into the house of PW2 Lucas Daudi Mwita; they attacked the family members who were in the house around that time, and stole therefrom certain properties. Those attacked were PW1, Milka Lucas, who was PW2's daughter, and PW4 Ramadhani Fadhili, who was the latter's servant. The properties stolen included cash T. shs. 700,000/=, one camera make Sony valued at T. shs. 700,000/=, one pair of rubber shoes valued at T. shs. 50,000/=, and 3 mobile phones valued at T. shs. 210,000/=.

After they were satisfied that the bandits had left, PW1 and PW4 reported the incident to their neighbours, including PW6 Omary Chando, and subsequently to the police at Kidenge Kwa Mathias. The police sprang into action, fruiting into the arrests of the appellant and his colleague, Mussa s/o Idd. They were arraigned at the said District Court before which they protested their innocence. As already pointed out, the appellant was subsequently convicted and sentenced as it were, while his colleague, the said Mussa Idd, was found not guilty and acquitted.

When the appeal was called on for hearing, the appellant appeared in person and was not represented; whereas the respondent/Republic was represented by Ms Anita Sinare, learned State Attorney.

At the outset, Ms Sinare rose and informed the Court that the appeal before us was incompetent on the ground that the first appeal before the High Court was a nullity as it was heard without there being a notice of appeal as required by section 361 (1) (a) of the Criminal Procedure Act Cap. 20 of the Revised Edition, 2002 (the CPA).

On his part, the appellant contended that he had prepared the notice of appeal and he believed it was forwarded to the court. On being probed if he had a copy of the said notice of appeal, he requested for time so that he could trace it at the prison administration, thus prompting the Court to adjourn the hearing.

On the following day, the appellant availed to the Court a copy of the notice of appeal which was addressed to the District Registrar of the High Court, but there was no indication that it was ever received at the High Court. On being shown that copy, Ms Sinare submitted that it was as good as a notice not given. He urged the Court to strike out the appeal for being incompetent.

We have carefully examined the Record of Appeal. We are satisfied that there is no trace of the appellant's notice of appeal to the High Court, also that the record does not reveal that the appellant ever gave an oral notice of his desire to appeal. We have, likewise, examined the copy of the notice which was purportedly forwarded to the Registrar of the High Court at Dar es Salaam. We have realised that it bears no evidence that it was ever received by that court. As such, Ms Sinare cannot be validly faulted that it was as good as a notice not given.

We wish to point out and emphasize that where an appeal may have been entertained by the High Court without clear evidence that the appellant gave the notice of his intention to appeal as envisaged by section 361 (1) (a) of the CPA, such an appeal will be regarded as having been improperly before that court. That section provides that:-

"(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."

It is glaringly clear that the provision mandatorily requires the person who feels aggrieved with the decision of the court and intends to appeal to the High Court, to give notice of his intention to appeal. Of course, as we observed in the recent case of **Republic v. Mwesige Geoffrey and Another**, Criminal Appeal No. 355 of 2014, the section suffers from the omission on where or to whom the envisioned notice of intention to appeal may be given. Although this is in essence not the controversy in the present case, we have felt it opportune to repeat the direction we gave in that case that the said notice of intention to appeal to the High Court should be made in the trial court.

Back to the track, having said that there is no evidence that the appellant gave the notice of his intention to appeal in terms of the just quoted provision, we find and hold that the appellant's appeal before the High Court was illegally entertained; thus invalid. Consequently, the proceedings before that court, so also the resultant judgment, were a nullity.

In view of the above, in terms of the power obtaining under section 4 (2) of the Appellate Jurisdiction Act Cap 141 of the Revised Edition, 2002, we quash the proceedings and judgment of the High Court. The appellant is at liberty to once again pursue the intended

appeal before the High Court in compliance with the dictates of section 361(1) (a) of the CPA, and of course, subject to the law of limitation.

DATED at **DAR ES SALAAM** this 2nd day of March, 2018.

B. M. LUANDA
JUSTICE OF APPEAL

B. M. MMILLA
JUSTICE OF APPEAL

G. A. M. NDIKA
JUSTICE OF APPEAL

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


P. W. BAMPIKYA
SENIOR DEPUTY REGISTRAR
COURT OF APPEAL