

**IN THE HIGH COURT OF TANZANIA**

**AT TANGA**

**CRIMINAL APPEAL NO.42 OF 2009**

*(Originating from DISTRICT Court Handeni, Cr. C. No.412/2007)*

**ALLY MADENI.....APPELLANT**

**VERSUS**

**ATHUMANI RAMADHANI.....RESPONDENT**

**Date of last order: 16/11/2009**

**Date of Judgment: 19/02/2010**

**JUDGEMENT**

**Mussa, J;**

This appeal admits to quite an extra-ordinary complexion. Its genesis is a proceeding comprised as criminal Case No.412 of 2007; instituted in the District Court of Handeni. The respondent was arraigned there for stealing by agent, contrary to section 273 of the penal code, chapter 16 of the laws. The allegation on the particulars was that on the 29<sup>th</sup> October 2007, at Kilindi village, within Handeni District; the respondent stole a sum of shs.3,000,000/=, in cash; of which was entrusted to him by Ally Madeni, incidentally, the appellant herein.

The respondent denied the accusation, whereupon, the prosecution featured three witnesses, appellant inclusive, to support the indictment. The appellant countered in reply upon affirmed testimony, with three witnesses to his support. At the close of the enquiry, the verdict was: "Not guilty", that is, in favour of the respondent and; such was handed down December 15<sup>th</sup>, 2008. A good deal later, more precisely, August 14<sup>th</sup>, 2009 the appellant took the course upon himself; filing unto this court what he

thought was an appeal against the acquittal of the respondent. Thus, the unusual setting accompanying this matter is in the fact that, here, it is not the DPP; rather, the alleged victim or complainant is the one at odds with the acquittal verdict. At the hearing, when asked to account for the peculiar arrangement, the appellant rather left the matter for this courts' a determination. As for the respondent, he was no show at the hearing but; the decision was to proceed in his absence, more so, as there was glaring proof that he refused service.

Now, as I anxiously address the challenge, a view is attractive, if anything, from the generality of the provisions of section 359; to the effect that, after all, the option to appeal, as comprised there; is to **"any person"** with respect to **"any finding, sentence or order made by a subordinate court"**. Thus, an argument may flow therefrom, to the effect that an appellant may be any person aggrieved as upon any order, acquittal inclusive. It may, thus, be argued that one need not be a convict to avail the provision; just as the order desired to be impugned may well be an acquittal. It is my view, though, that the provisions of section 359 should not be read in isolation to other provisions and; upon ones' reading the whole of Part X unto where the subject of appeals is; a scheme clearly comes into picture according to which the intendment was to create two separate regimes of appeals. The first relates to aggrieved persons at large, whereas, the second is to the Director of Public Prosecutions, more specifically, upon dissatisfaction with an **"acquittal, finding, sentence or order made or passed by a subordinate court."**

To this end, it seems to me that Parliament intendment was to place the option of an appeal against an acquittal exclusively in the hands of the DPP. To construe it otherwise could open up to a superfluity of actions by several parties as against one and the same order. This is quite

apart from letting ajar the flood gates of which, on itself, may lead to absurdity. When all is said and done, this appeal is, obviously, incompetent and, on the score, it is, accordingly, struck out. The self imposed appellant may wish to consult the Director of Public Prosecution for whatever decent course, as by law, is available. It is so ordered.

  
**K.M. MUSSA, J.**  
**16/2/2010**

19/2/2010

Coram: Mussa, J;

Appellant: Absent

Respondent: Absent.

**Order:** Judgment delivered.



  
**K.M. MUSSA, J.**  
**19/2/2010**