

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF ARUSHA
AT ARUSHA**

CIMINAL APPEAL NO. 37 OF 2018

1. MOHAMED SAID HANS.....1st APPELLANT
2. YASSIN MOHAMED SHABAN2nd APPELLANT
3. ANWAR NASHER HAYEI..... 3rd APPELLANT
4. SWALEHE HASAN OMAR.....4TH APPELLANT

VERSUS

REPUBLIC..... RESPONDENT

RULING

DR. OPIYO, J

The appellants have been aggrieved by the, Proceedings, Conviction and Sentence of the Resident Magistrate court of Arusha, (Hon Baro, RM) delivered on the 30th January, 2018. They have preferred their appeal before this court.

On 11/07/2018 when the matter was before me for Hearing.Appellants appeared in person unrepresented while the respondent's was represented by Mr.Kombe Learned State Attorney.

Before I could hear the appeal on merit, Mr. Kombe raised a preliminary objection on the defectiveness of the Notice of Appeal. It was his argument that, after going through the appeal records they have come to realize that notice of appeal is defective for referencing that the appeal originates from criminal case while in reality it originates from a Preliminary Inquiry (PI) matter. He thus argued that, since the appeal is initiated by the notice of appeal as per the case of **Peter Shangwe V R** Criminal Appeal No 354/ 2008 (unreported) if the notice is defective, the appeal is incompetently before the court. The learned State Attorney therefore prayed for the appeal to be struck out.

In essence, replying to the State Attorney's arguments, applicants did not object the application, but blamed the defect on the notice to the prisons office that prepared the same and not fault on their part. They therefore prayed to be availed with extension of time to file notice and appeal out of time after the current appeal are struck out. In rejoinder Mr. Kombe did not object the prayer for extension of time to file notice out of time.

I have gone through the Notice of Appeal filed by the appellants in respect of the present appeal, the same shows that the appellants are appealing against criminal case No 65 of 2014 but the proceedings of the lower courts shows that it was PI.NO 65 of 2014. The two are totally different. Thus, as clearly submitted by the learned State Attorney and not objected by the appellants, the notice in support of the appeal is defective as it referred to a case which is not subject of this appeal. Consequently, the appeal before me is incompetent and is hereby struck out.

On the prayer by the applicants that they be availed with time to file notice of appeal out of time, although not objected to by Mr. Kombe, representing the respondent, but I hold my reservation. This is because what is before me was an appeal No 37/2018 and not application for extension of time. Thus, this court cannot go ahead to determine the application that is not before it. In other words, extension of time cannot be made automatically after striking out the incompetent appeal for a defective notice of appeal. The appellants are advised to file an application for the extension of time to file notice of appeal and appeal out of time.

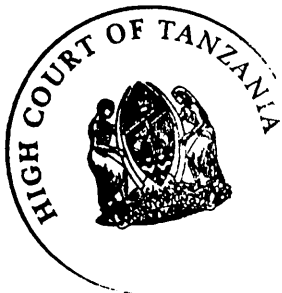
(SGD)

DR. M.OPIYO

JUDGE

17/7/2017

I hereby certify this to be a true copy of the original.



A handwritten signature in black ink, appearing to be "S.M. KULITA".

S.M. KULITA

DEPUTY REGISTRAR

ARUSHA

03/8/2018