

**IN THE HIGH COURT OF TANZANIA
AT DAR ES SALAAM**

CRIMINAL APPEAL NO. 380 OF 2016

(Originating from Temeke District Court at Temeke in Criminal Case No. 42 of 2016)

NASSORO RASHID

.....

APPELLANT

VERSUS

THE REPUBLIC

.....

RESPONDENT

RULING

2/5/2018

G.J. Mdemu,J

This is an appeal against the decision of Temeke District Court, which on 29/9/2016 convicted the Appellant, the then 4th accused in Criminal Case No. 42/2016, for the offence of causing actual bodily harm and sentenced him to a conditional discharge of 12 months and a compensation of Tshs. 300,000/= for the injuries suffered. The 1st, 2nd, 3rd and 5th accused in that criminal case were acquitted of the offence. Under the service of SBM LAW CHAMBERS ADVOCATES, the Appellant filed two grounds of appeal to challenge the conviction met.

At the hearing of the appeal on 27/4/2018, Mr. E. Shija, learned State Attorney for the Respondent, the Republic objected to the hearing of appeal for being incompetent. Mr. Shija submitted that the appeal was lodged without first having filed the notice of intention to appeal which in the present appeal was filed in the High Court instead of Temeke District Court. He cited Section 359 (1) of the Criminal Procedure Act, Cap. 20

which to him require the notice of intention to appeal to the High Court be filed in the trial Court. As the notice was filed in the High Court, he argued, there was no notice filed hence prayed the appeal be struck out for want of notice of intention to appeal.

In rebuttal, Mr. Abdallah, learned Advocate for the Appellant, while conceding the notice of intention to appeal been filed to the High Court, he urged this court to take note of the same as a copy was served to Temeke District Court, hence the latter was aware of the intention to appeal by the Appellant. The notice filed on 5/10/2016 intending to appeal from the decision of the trial court met on 29/9/2016 was within time limit stipulated under section 361 of the CPA; the learned Counsel for the Appellant added.

The issue to be determined is whether notice of intention to appeal to the High Court filed to the High Court is in compliance with the provisions of section 359(1) and 361 of the CPA. In principle, whereas section 359 (1) of the CPA imposes duty to the Trial Court to inform parties intending to appeal to file notice of appeal and petition of appeal respectively, Section 361 of the CPA simply dictates limitation for insuance of notice of appeal and filing of appeals. There is no mention as to where the notice of intention to appeal be filed.

In its judgment dated 2nd March, 2018, the Court of Appeal in **Issa Juma Kinanda Vs. The Republic, Criminal Appeal No. 275 of 2012 (unreported)** repeated its earlier decision in **Republic Vs. Mwesige Geoffrey and Another, Criminal Appeal No. 355 of 2014 (unreported)** that provisions of the Law in the CPA on notice of intention

to appeal suffers from the omission on where the notice of intention to appeal may be given. At page 5 of the judgment, the Court of Appeal in **Issa Juma Kinanda** (supra) held that:-

".....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".

The notice of intention to appeal in the present appeal as submitted by the learned State Attorney and conceded by the learned Counsel for the Appellant had its way in the High Court Registry. There was therefore no notice of appeal filed.

It is also on record that the learned Counsel for the Appellant filed two notices of appeal on the sameday. Another notice bears the stamp of Temeke District Court of 5/10/2016. It appears the learned Counsel for the Appellant wasn't sure as to which route to follow. It is not the duty of this Court to make a determination, of which, between the two notices, is an appropriate one. Our Courts are Courts of Law and not ambulance chasers looking for facts not pleaded by parties.


In view of the above, the present appeal is hereby struck out for want of notice of intention to appeal. The Appellant, or under the service of his legal Counsel for that matter, if so wishes, may make an application for extending time within which the notice of appeal, in case so granted, be filed.

It is so ordered.

Dated at Dar es Salaam this 2nd day of May, 2018.


G.J. MDEMU
JUDGE
2/5/2018

Ruling delivered in the presence of Mr. Abdallah, learned Counsel for the Appellant and Ms. D. Mcharo, State Attorney for the Respondent, the Republic this 2nd day of May, 2018.


G.J. MDEMU
JUDGE
2/5/2018