

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

**CRIMINAL APPEAL NO. 406 OF 2016**

(Originating from Ilala District Court at Samora Avenue in Criminal Case No. 296 of 2013)

**HASSAN SULEIMAN**

.....

**APPELLANT**

***VERSUS***

**THE REPUBLIC**

.....

**RESPONDENT**

**RULING**

20/4/2018

**G.J. Mdemu, J**

On 17<sup>th</sup> of April, 2018, Criminal Appeal No. 406 of 2016 by Hassan Suleiman came for hearing. It was an appeal against conviction and sentence of 15 years imprisonment for the offence of grave sexual abuse C/S 138 C (1) (a) and 2 (b) of the Penal Code, Cap 16 R.E. 2002. The appeal was lodged after the Appellant having applied to the High Court successful to file notice of intention to appeal out of time in Misc. Criminal Application No. 11 of 2016 before Hon. Feleshi, judge.

At the hearing, the Respondent the Republic, represented by Ms. Z. Masinde, learned State Attorney raised a preliminary objection as to competence of the appeal for want of notice of intention to appeal. She argued that the notice of intention to appeal in compliance with the Court's Order in miscellaneous criminal application No. 11 of 2016 was filed in the High Court, Dar es Salaam Registry on 19/2/2016 instead of being filed at

Ilala District Court as ordered by this Court on 11/2/2016. She consequently asked this Court to dismiss the appeal for want of that legal requirement.

In a reply to the Respondent's point of preliminary objection, the Appellant conceded violation of the procedural legal requirement but shifted the blame to Prison administration who prepared and subsequently lodged the notice of appeal on his behalf. The learned State Attorney in her rejoinder submitted that such an excuse is not a justification, and argued further that the Appellant, if he so wishes, may make another application to file notice of appeal out of time.

It should be noted that appeals are governed by procedures which must be obeyed. The Appellant was allowed to file his notice of appeal to the trial court. He filed the same to High Court. Much as it was within time, yet is as good as there was no notice filed. It is a legal Principle that criminal appeals lodged to the High Court without first having filed notice of intention to appeal within the prescribed time under section 361 (1) (a) of the CPA, Cap 20 R.E. 2002, and specifically in this appeal, as per order of the Court dated 11/2/2016, are incompetent and cannot be entertained. This position is supported by the Court of Appeal in ***Issa Juma Kinanda V. Republic, Criminal Appeal No. 275 of 2012, Dar es Salaam (unreported)***, at page 5 of the judgment when deliberating where the notice of appeal be filed, the Court observed the following:-


*"Ofcourse as we observed in the recent case of **Republic versus Mwesige Georfrey 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 not a 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 filed in the trial court.*

The present appeal was lodged to the High Court following the notice of intention to appeal filed in the High Court. Such a notice is defective and is as good as there was no notice filed henceforth rendering the present appeal incompetent for want of such unexcusable legal requirement. The Appellants notice of intention to appeal was supposed to be filed at Ilala District Court, the Court which heard, convicted and sentenced the Appellant. As guided by the learned State Attorney, the said notice is defective and the Appellant is at liberty to file a fresh application to the High Court to file notice of intention to appeal out of time.

The present appeal is hereby struck out for being incompetent for want of notice of intention to appeal.

It is so ordered.

Dated at Dar es Salaam this 20<sup>th</sup> day of April, 2018.



**G.J. MDEMU**  
**JUDGE**  
**20/4/2018**

This ruling has been delivered in the presence of Ms. Masinde, learned State Attorney and the Appellant this 20<sup>th</sup> day of April, 2018.



**G.J. MDEMU**  
**JUDGE**  
**20/4/2018**