

IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)
AT DAR ES SALAAM
CRIMINAL APPEAL NO. 200 OF 2017
(Original Criminal Case No. 100/2016)

MWANAKOMBO RAMADHANI..... APPELLANT

VERSUS

THE REPUBLIC RESPONDENT

RULING

Ruling Date: 05.07.2018

A.Z.MGEYEKWA, J

In the District Court of Temeke, Mwanakombo Ramadhani, the appellant was charged and prosecuted with the offence of threatening to kill one Khalid Khamis Chicago contrary to section 89 (2) of the Penal Code Cap. 16 [R.E. 2002].

A brief background of this case is as follows. On 19th day of December 2013 at Chang'ombe area within Temeke District in Dar es Salaam Region, the appellant threaten to kill one Khalid Khamis Salim Chicago by telling him "*Nitakuonyesha kuwa mimi ni mtoto wa mjini na utatangulia kaburini kabla yangu.*"

The Appellant herein above has filed a Notice of Appeal seeking to challenge the decision of the District Court of Temeke.

The appellant was represented by Iddi Mtinginjole, the learned counsel while Ms. Immelda Mushi, learned counsel appeared for the respondent.

When this matter came for hearing of the purported appeal the learned State Attorney expressed concern that the applicant has not file a Notice of Appeal as per section 361 (1) (a) of the Criminal Procedure Act, Cap. 22 [R.E. 2002]. The section requires the appellant to notify the court within 10 days after the judgment has been read. Thus, the counsel for the appellant has prayed for this court to strike out the notice of the appeal.

On the side of the counsel for the appellant he sated that they submitted the notice of intention to appeal on 30th June 2017. He said the application was made in court and was based on section 361(1) (a) of the Criminal Procedure Act Cap. 20 [R.E 2002] and the section did not specify the format of writing a notice of appeal. Thus, they prayed for the court to regard their application as a notice of appeal since they have indicated that the appellant has an intention to appeal. He further stated that the only condition, which is provided under the provision, is the time frame of 10 days. But it does not show

the manner whether it may be oral or written. As long the appellant has filed a letter with an intention to appeal it suffice to be a notice of appeal.

In reply Ms. Mushi strenuously submitted that in this appeal there is no notice of appeal. The appellant brought a letter requesting for copies of judgment and court proceedings and not a notice of appeal. The letter, which the appellant has submitted cannot replace a notice of appeal. She further contended that the heading of the letter is not reflecting their intention to appeal. Thus, the appellant was supposed to follow proper procedure and not otherwise thus his application be dismissed.

In his rejoinder the counsel for the applicant stated that what they brought before the court was not a letter but application for judgment and court proceeding for intention to appeal. The heading itself cannot suffice it must be read together with the words stated in the letter. He insisted that they have brought a notice of intention to appeal. He requested the court not to be hindered with technicalities instead it should base in dispensing justice for the sake of expeditious determination of the substantive matter before this Court.

After a cursory perusal of the records in this appeal I have found counsel for the appellant in his letter requested for copies of judgments and court proceedings since their client

asked them to make an appeal against the conviction. The counsel for the appellant in his letter specified the intention to appeal. In support my argument I refer section 359 (1), which does not provide for a format of notice of intention to appeal thus a letter would have serve a purpose as it was decided in the case of **Mohamed Dadi Ndalimo v R** Criminal Appeal No. 204 of 2004 and in the case **Siasa Mpinge v R** Criminal Appeal No. 9 of 2003 (unreported). Section 361 (1) (a) of the Criminal Procedure Act, Cap. 22 [R.E. 2002] provides that:-

" Save as hereinafter provided, any person aggrieved by any finding, sentence or order made or passed by a subordinate court other than a subordinate court exercising its extended powers by virtue of an order made under section 173 of this Act may appeal to the High Court and the subordinate court shall at the time when such finding, sentence or order is made or passed, inform that person of the period of time within which, if he wishes to appeal, he is required to give notice of his intention to appeal and to lodge his petition of appeal."

The Court of Appeal further stated that:-

"For our purpose, the catchwords in the above provisions are to give notice of his intention to appeal. What is required is "to give notice of the intention to appeal". A letter would, therefore, serve the purpose in the

circumstances."

For the reason given above, I regard the letter of the appellant as an intention to appeal thus, the application for appeal is sustained.

DATED at Dar es Salaam this 02nd day of July 2018.




A.Z.MGEYEKWA, J

JUDGE

05.06.2018

Delivered on this 5th July 2018 in the presence of both parties.




A.Z.MGEYEKWA, J

JUDGE

05.06.2018