

IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)
AT DAR ES SALAAM

MISCELLANEOUS CRIMINAL APPLICATION 139 OF 2011

(Arising from Criminal Case No. 117B/2010 at District Court of Kibaha)

Emmanuel Petro@Joseph

APPELLANT

VERSUS

The Republic

RESPONDENT

RULING

Date of last order: 20.04.2020

Date of Ruling: 23.06.2020

Ebrahim, J.:

This ruling originates from the decision of the Court of Appeal in Criminal Appeal No. 297 of 2017 against the decision of hon. Chinguwile, J (as she then was) of 02.04.2012 whereby the appeal was dismissed for want of notice of intention to appeal. The Court of Appeal in the exercise of their original jurisdiction quashed and set aside the High Court judgement on the reason that the appellate judge did not give parties their right to be heard on the issue of notice of intention to appeal which formed the basis of her decision. The Court of Appeal further remitted the case to the High Court for re-hearing the appeal and wanted this court if it considers the need to look into the issue of the

presence of notice of intention to appeal, to invite parties to address on the issue.

Following the guidance of the court of appeal; and following the dispensing with the appearance of parties under the prevailing pandemic of Covid-19; the court issued an order on 20.04.2020 requiring parties to argue the appeal by way of written submission and in so doing parties should address the court if the pre-requisite notice of appeal was accordingly filed.

The appellants filed submissions in support of his grounds of appeal. Nevertheless he completely refrained to address the issue of notice of intention to appeal as to whether it was filed according to the law.

On the other hand the respondent's side filed their submission addressing the issue of whether there is presence of Notice of Intention to Appeal or not. They explained the historical background of the matter in so far as the dismissal of the appeal for want of notice of intention to appeal by hon. Chinguwile, J (as she then was) is concerned on 2nd April 2012. It was contended that on 31st March 2014, the issue of notice was addressed before hon. Utamwa, J and the appellant presented the Notice of Appeal filed in Court on 27th December, 2013 pursuant to the ruling of the Court allegedly before hon. Muruke, J. on 12th December 2013. Hon. Utamwa, J made observation that there was no order allowing the appellant to file Notice of Appeal out of time.

The Respondent contended further that upon perusal of the file, they found an order dated 12th December 2013 before hon. Mujuluzi, J (as he then was) and not Muruke, J arising from Miscellaneous Criminal Application No. 54/2013 for extension of time. Eventually the matter came before hon, Kaduri, J (as he then was) who on 01st April 2015 dismissed the appeal on the basis that the appellant ought to have lodged the appeal to the Court of Appeal. The respondent called for the proof from the appellant of the order of being granted extension of time to file notice of intention of appeal or else the appeal be struck out.

The appellant did not rejoin.

Indeed section **361(1)(a) of the Criminal Procedure Act, Cap 20 RE 2002** gives mandatory requirement for the a person seeking to appeal to the this court to file notice of intention to appeal within 10 days from the date of finding, sentence or order.

The assertion by the Republic that there is a purported order of Mujuluzi, J instead of Muruke, J prompted me to thoroughly go through the records of the proceedings. In the records, there is a letter from the appellant dated 20.07.2011 requesting for copies of judgement and decree so that he can initiate an appeal. There is another letter of 21.08.2011 again seeking for copies of judgement and decree. Certainly the only proof that the appellant was

extended time to file notice of intention to appeal and the appeal is the order of hon. Mujulizi, J (as he then was) of 12.12.2013 availing the appellant with 30 days to lodge the same. However, the same appeal was eventually dismissed by hon. Kiduri on the basis that the court has become functus officio. All in all the answer for the presence of notice of appeal against the initial appeal before hon. Chinguwile, J (as she then) which is the basis of the instant re-hearing of appeal has not been provided for and I can safely say that there was no such notice when the appellant appealed against the decision of the Kibaha District Court in Criminal Case No. 117 of 2010.

In the circumstances therefore, I find that the appeal before me is incompetent for want of notice of intention to appeal. I accordingly struck it out.

Nevertheless, in considering the ends of justice and the want of having proper records before the court, this court suo motto extends time and avail the appellant with 30 days from the date of this ruling to file notice of intention to appeal and memorandum of appeal.

Accordingly ordered




R.A. Ebrahim
Judge

Dar Es Salaam
23.06.2020