

THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
THE HIGH COURT OF TANZANIA
IN THE DISTRICT REGISTRY OF MBEYA
AT MBEYA
CRIMINAL APPEAL NO. 52/2019

(Original Criminal Case No. 86/2018 from Momba District, Mbeya)

1. ALEX MWASHILINDI..... APPELLANT
2. DANIEL SHOMBE.....APPELLANT

VERSUS

THE REPUBLIC..... RESPONDENT

Ruling

Date of Last Order: 18.06.2019

Date of Ruling: 18.06.2019

DR. MAMBI, J.

This Ruling emanates from an appeal filed by the appellants. In the District Court the appellants were found guilty and convicted as charged. He was subsequently sentenced. When the matter came for hearing, the republic through the learned state Mr Davis attorney raised an objection that the appeal has been properly filed to this

court since the notice is defective. He argued that the notice of appeal is tilted the Resident Magistrate Court instead of High Court.

I have keenly gone through and considered the objection and concern raised by the respondent in line with the reply by the appellant. The main issues in my considered view whether this appeal is proper or competent before this court or not. Indeed even the appellants seems to admit that the notice of appeal is not proper. It is on the records that the notice of appeal filed to this court does not comply with the requirement of notice of appeal. It appears the Title of the notice was addressed to the trial court and one may assume that the appellant was appealing to the same trial court instead of this court. The Notice of appeal must be titled In the High Court of Tanzania at Mbeya Registry and filed at the District Court that made the decision. The law under section 361 of the Criminal Procedure Act, Cap 20 [R.E.2002] is clear on the matters related to notice of appeal and appeal in general. Indeed. I wish to refer to section 361 (1) of the Criminal Procedure Act, Cap 20 [R.E.2002] and quote as follows:

(1) Subject to subsection (2), no appeal from any finding, sentence or order referred to in section 359 shall be entertained unless the appellant–

*(a) has given **notice** of his intention to appeal **within ten days** from the date of the finding, sentence or order or, in the case of a sentence of corporal punishment only, within three days of the date of such sentence; and*
(b) has lodged his petition of appeal within forty-five days from the date of the finding, sentence or order, save

that in computing the period of forty-five days the time required for obtaining a copy of the proceedings, judgment or order appealed against shall be excluded.

(2) The High Court may, for good cause, admit an appeal notwithstanding that the period of limitation prescribed in this section has elapsed

The above provision is clear that all notices of appeal must comply to the provisions of the law. I agree with the learned State Attorney that the notice of appeal before this court is defective. This means that there is no proper appeal before this court. Having found that the appellant wrongly appealed to this court, the only remaining question before me will now be, whether there is any appeal before this court. In my considered view, since the appellant did not comply with the mandatory requirements of the law, it is as good as saying there is no appeal at this court. I wish to refer the decision of the court in ***Joseph Ntongwisangue another V. Principal Secretary Ministry of finance & another Civil Reference No.10 of 2005*** (unreported) where it was held that:

"... Experience shows that the litigations if not controlled by the court, may unnecessarily take a very long period and deny a party in the litigation enjoyment of rights granted by the court.

Reference can also be made to the decision of the court of Appeal of Tanzania in ***The Director of Public Prosecutions v. ACP Abdalla Zombe and 8 others*** Criminal Appeal No. 254 of 2009, CAT (unreported) where the court held that:

“this Court always first makes a definite finding on whether or not the matter before it for determination is competently before it. This is simply because this Court and all courts have no jurisdiction, be it statutory or inherent, to entertain and determine any incompetent proceedings.”

From what I have observed, I am constrained to hold that the appeal before this court is fatally incompetent. From the reasons stated above, I am of the settled view that the appeal before this court is incompetent. Since the appeal is incompetent I don't see any reasons for discussing the grounds of appeal that have been raised. I therefore hold that there is no any appeal before me in this court. This means that this court has not been properly moved by the appellants due to the fact that the purported notice of appeal is defective. In the default of filing the proper notice of appeal the present appeal is certainly not proper before this Court. It is incompetent and should be struck out, as I hereby do.

In the circumstances, the objection raised by the respondent is sustained and upheld which means that the intended appeal is struck on the reasons I stated above. The appellants are at liberty to file their appeal using proper notice of appeal within fourteen days from the date of this ruling




DR. A. J. MAMBI

JUDGE

18.06. 2020

Ruling delivered online through virtual court this 18th day of June, 2020 in presence of both parties.



DR. A. J. MAMBI
JUDGE

18.06. 2020

Right of appeal is explained.



DR. A. J. MAMBI
JUDGE

18.06. 2020