

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(MOSHI DISTRICT REGISTRY)**

AT MOSHI

CRIMINAL APPEAL NO. 57 OF 2019

(Originating from Criminal Case No. 121 of 2018 of the District Court of
Same, Hon. F.J. Kigingi, RM)

THE DIRECTOR OF PUBLIC PROSECUTIONS.....APPELLANT

VERSUS

PETER ELIAS MANONGA.....1st RESPONDENT

OMARY RAJABU MUSSA.....2ND RESPONDENT

JUDGMENT

Last Order: 6th July, 2020

Date of Judgment: 31st August, 2020

Mwenempazi, J:

This is an appeal against sentence. The respondents were charged in the District Court of Same with an offence of Grievous harm contrary to section 225 of the Penal Code [Cap 16. R.E. 2002]. After hearing the trial court found them guilty and convicted them for the offence as charged. After mitigation the trial court sentenced the respondents to pay a fine of Tshs. 150,000/= each or one-year imprisonment in default. The trial court also ordered each of the respondent to compensate the victim Tshs. 100,000/=.

Being aggrieved by the sentence imposed, the Director of Public Prosecutions ("the DPP") filed this appeal basing on a single ground, namely:

That, the trial Magistrate erred in law by sentencing the respondents with alternative sentence.

Before the appeal was set for hearing the respondents filed a notice of preliminary objection to the effect that the petition of appeal has been accompanied by a defective notice of appeal.

At the hearing of the appeal, the DPP was represented by Ms. Verediana Mlenza, learned State Attorney and the respondents appeared in person and unrepresented.

In her brief submissions, Ms. Mlenza submitted that the trial court erred by sentencing the accused with an alternative sentence instead of relying on the law as it provides. For that reason, Ms. Mlenza prayed for this court to allow the appeal by sentencing the accused to serve a term of imprisonment.

Submitting in response, the first respondent stated that according to their objection which they filed the appeal is incompetent before this court as it is illegal. It was his prayer that the appeal be dismissed as the notice of appeal is illegal.

Ms. Mlenza rejoined by acknowledging the error that indeed the notice was not in proper form.


Now, given the fact that the appellant has conceded that the notice of appeal was improper I see no issue that needs to be determined. The court of appeal

gave clear directions as to the format in which the notice of appeal should be in so far as the title is concerned. In the case of **Director of Public Prosecutions v. Sendi Wambura and 3 Others, Criminal Appeal No. 480 of 2016 CAT-at Bukoba (unreported)** the court of appeal observed at page 13 of the judgment that, *"the notice of intention to appeal from subordinate court to the High Court should have a specific prescribed format and title **"In the High Court of Tanzania"** although it should be filed in the District Court as per section 379 (1) (a) of the CPA..."*

In light of the above, I find the notice of intention to appeal in this case improper. Therefore, the preliminary objection raised is with merit. Consequently, I hereby strike out the appeal for being incompetent.

DATED and DELIVERED at Moshi this 31st day of August, 2020




T. Mwenempazi
Judge
31/08/2020