

**IN THE HIGH COURT OF TANZANIA
IN THE DISTRICT REGISTRY**

AT MWANZA

HIGH COURT CRIMINAL APPEAL No.143 OF 2020

*(Originating from the judgment of the District Court of Chato in Criminal Case No. 45 of
2020, dated 13th February, 2020)*

KABAGAMBE MIHAYO.....APPELLANT

VERSUS

THE REPUBLIC.....RESPONDENT

RULING

22nd February, 2020.

TIGANGA, J.

The appellant herein stood charged before the District Court of Chato, with an offence of rape contrary to section 130(1)(2)(e) and 131(1) of the Penal Code [Cap 16 R.E 2002]. He pleaded guilty to the offence and consequently was convicted as charged. According the charge sheet, he was accused that on 07th day of February 2020 at Mlimani in Buzirayombo Village in Chato District, Geita Region, he committed an offence by having sexual intercourse with S d/o J (Names in Acronyms) a girl of 17 years old.

He was sentenced a statutory sentence of 30 years in jail. Dissatisfied by the decision the appellant filed two grounds of Appeal as follows:

1. That the trial magistrate erred both in law and facts to enter a plea of guilty while the appellants plea was equivocal
2. That the trial court erred to determine the matter against the appellant without credible evidence against to constitute the offence of rape.

The petition of appeal was preceded by the Notice of Appeal filed showing his intention to appeal.

When this appeal was called for hearing, Ms. Mwaseba, learned State Attorney who appeared for the respondent, the republic, came up with the point of law that the Notice of Appeal which instituted the appeal is defective in that it was titled and deemed to be filed in the District court instead of being filed in the High Court. She cited the decision of **The DPP vs Sendi Wambura & 3 Others, Criminal Appeal No. 480 of 2016 decided on 24th August 2018 by the CAT-Bukoba**. She submitted that the Court of Appeal held that the proper title of the Notice of Appeal in relation to the appeals from the subordinate courts to the High Court must

be titled "*In the High Court*" she submitted urging this court to find just like the Court of Appeal did in the case cited above, that by being filed in the District Court the Notice of appeal is defective, and so deem the appeal at hand incompetent and so it be struck out.

The appellant when called upon to respond, being a lay person and without representation, and after I have explained the gist and the detail of the objection in a simple and detailed manner, he had a very brief reply, he asked the court to consider the defects as minor and hear the appeal at hand. While in rejoinder Ms. Mwaseba, SA, asked the court to find the notice to be defective in substance the defect which cannot leave the appeal to survive. She asked the appellant to be advised to take the proper recourse.

Now having summarized the contents of the submissions made by the state attorney and the reply by the appellant. I find the issue for determination to be whether the Notice of appeal is defective to the extent of rendering the appeal at hand incompetent.

The requirement of the person aggrieved by the decision of the subordinate court to file the Notice within ten days is provided under

section 361(1)(a) of the Criminal Procedure Act [Cap 20 R.E 2019] that provision does not provide the format of the Notice of Appeal. However in the Case of **DPP vs Sendi Wambura & 3 others, Criminal Appeal No. 480 of 2016** on 24th August 2018 by the CAT-Bukoba, the Court of Appeal of Tanzania was faced with the duty of interpreting the provision of section 379(1)(a) of the CPA on how the Notice of appeal lodged by the DPP should be titled. In its findings the Court of Appeal of Tanzania, held at page 13 of the judgment inter alia that;

*"Therefore we propose to the relevant authority 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. **This should also be the case for notice of appeal lodged under section 361(1)(a) of the CPA by other appellants**".*

[Emphasis added]

That format was also adopted by the court of Appeal in the later case of **Farijara Shabani Hussein and Another vs The Republic**, Criminal Appeal No.274 of 2012 Court of Appeal, Dar es salaam. However, while

mindful that the principle was new but could cripple a lot of cases which were already in the registry with the notice of appeal titled the original court, the court of appeal allocated a grace period for the principle to become operative, and in that respect it held that;

*"For the purposes of enhancing consistency and certainty in the procedural requirements, we are minded to adopt the format which was prescribed therein and, as such a written notice of intention to appeal under section 361(1)(a) should, accordingly be titled "**In the High Court of Tanzania**"*

We should however, hasten to point out that the prescription we have just made is quite new and was obviously not a requirement at the time when the appellant filed their written Notice of intention to appeal. Being aware of the realities on the ground we order that the prescribed title should become operative six months from the date of the delivery of this ruling."

That ruling was delivered on 30th October, 2018 it means the grace period of six months computed from that dates, were expiring on 30th April

2019. In this case the notice of appeal was filed on 20th February 2020. It is thus not covered by the grace period, it was supposed to follow the format prescribed under the above two cases and titled "In the High Court of Tanzania" instead of being titled "In the District Court of Chato", in the end I find the notice of Appeal to be incurably defective, being defective it taints even the appeal, there is no notice filed in the High Court to notify the court of the appellant's intention to appeal. The appeal therefore was instituted without proper notice, it is therefore incompetent. It is thus struck out for the reasons given.

It is so ordered

DATED at **MWANZA** this 22nd day of February, 2021.



J.C.Tiganga

Judge

22/02/2021

Ruling delivered in open chambers in the presence of the appellant on line and Ms Mwaseba, SA. Right of appeal explained and guaranteed.



A handwritten signature in blue ink, appearing to read "J.C. Tiganga", is written above the printed name.

J.C.Tiganga

Judge

22/02/2021