

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF ARUSHA
AT ARUSHA**

CRIMINAL APPEAL NO. 98 OF 2019

(Originating from Resident Magistrates' Court of Arusha in Criminal Case
No. 153/2017)

JOHN THADEI SEBASTIAN APPELLANT

VERSUS

THE REPUBLIC RESPONDENT

RULING

~~29/4/2021 & 28/5/2021~~

ROBERT, J:-

This is a ruling on a preliminary objection raised by counsel for the Respondent on a point of law against the appeal filed by the Appellant, John Thadei Sebastian. The Appellant was charged of rape contrary to section 130(1)(2)(a) and 131(1) of the Penal Code, Cap. 16 (R.E.2002) at the Resident Magistrates' Court of Arusha. After a full trial, he was convicted and sentenced to 30 years imprisonment. Aggrieved, he filed a Notice of appeal under section 361(1)(a) of the Criminal Procedure Act, Cap. 20 (R.E. 2002) ~~expressing his desire to appeal to this court against the decision of the trial~~ court and proceeded to file the appeal.

Prior to the hearing of appeal the Respondent filed a Notice of Preliminary Objection to the effect that the Notice of Appeal filed by the Appellant is defective for indicating a wrong title of the court contrary to section 361(1)(a) of the Criminal Procedure Act, Cap. 20 R.E. 2019. He prayed that the appeal be struck out for want of proper Notice of appeal.

As a matter of practice, the case was fixed for hearing of the preliminary objection ahead of the hearing of the appeal. On the date set for hearing the Appellant appeared in person, unrepresented whereas the Respondent was represented by Mr. Ahmed Hatibu, State Attorney. Parties indicated their readiness to proceed with the hearing.

Highlighting on the point of objection Mr.Hatibu submitted that, the Appellant's Notice of appeal was addressed to the Resident Magistrates' Court of Arusha contrary to the requirement of the law. He observed that the law requires the Notice of Appeal to be addressed to the appellate court which in the present case was the High Court. He referred this Court to the Court of Appeal decision in the case of **DPP vs Sendi Wambura & 3 others, Criminal Appeal No. 480/2016, Bukoba (unreported)** at page 13 where the Court of Appeal held that although the Notice of Appeal is filed at the trial court it is supposed to be addressed to the appellate court.

He argued that, since the notice of appeal is defective the entire appeal is faulted. He therefore prayed for the appeal to be struck out.

Submitting in response, the Appellant who is seemingly an average person not in practice of law, deflected his blames to the Advocate who helped him to prepare the said Notice for occasioning the alleged defect. He claimed that the defect was out of his control as it was caused by an advocate and implored the court to hear the appeal on merit. He informed the Court that he had already prepared a proper Notice and wanted the court to receive it and proceed with hearing of the appeal.

I will now pose here and make a determination on whether the Notice of appeal is defective and deserves to be struck out for want of a proper Notice. The Notice in question was prepared under section 361(1)(a) of the Criminal Procedure Act, Cap. 20 (R.E.2002) which reads as follows:

"Subject to section (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 finding, sentence or order or, in the case of a sentence of corporal punishment only, within three days of the date of such sentence"

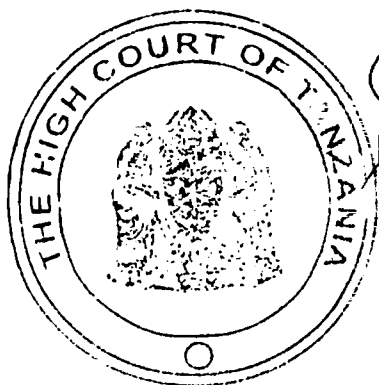
The issue raised by the learned counsel for the Respondent is on the way the Notice of appeal is titled. It is titled "In the Resident Magistrate Court". He submitted that based on the decision of the Court of Appeal in **DPP vs Sendi Wambura & 3 others (supra)**, the Notice of appeal filed by the Appellant is defective because its title is addressed to the trial court and not the appellate court.


Since there is no prescribed form on how the notice of intention to appeal from the subordinate court to the High Court is supposed to be titled or formatted, this Court has called in aid the cited decision of the Court of Appeal in the determination of this matter. In that case, the Court of Appeal noted at page 11 that the law is silent on this aspect. However, to bring certainty in the law, the Court resorted to purposive approach in order to remove the omission and, drew an inspiration from the Tanzania Court of Appeal Rules, 2009 as amended by Government Notice No. 362/2017 whereby the notice of appeal from the High Court to the Court of Appeal is titled "In the Court of Appeal of Tanzania". The Court proposed to the relevant authority that the notice of appeal for appeals filed from subordinate court to the High Court under section 379(1)(a) of the CPA and those filed under section 361(1) of the CPA should have a specific prescribed format

and title "In the High Court of Tanzania". The Court of Appeal proceeded to find the notice of appeal from the subordinate Court to the High Court titled "in the District Court" to be defective.

Guided by the decision of the Court of Appeal in the above cited case, since in the present case the Notice of appeal from the trial court to the High Court was titled "In the Resident Magistrates' Court", this court finds it defective and proceeds to strike out this appeal as it stems from a defective Notice of appeal. In order to safeguard the interest of justice, the Appellant is given 14 days from the date of this decision to file a proper notice and petition of appeal.

It is so ordered,




K.N. ROBERT
JUDGE
28/5/2021