

IN THE HIGH COURT OF TANZANIA

IN THE DISTRICT REGISTRY

AT MWANZA

CRIMINAL APPEAL NO. 83 OF 2021

(Arising from the original Resident Magistrate's Court of Geita of Geita in Traffic Case No. 34 of 2020 before Hon. E. E. Katemana, SRM dated the 27th day of May, 2021)

MASOUD S/O HAJI @ JUBIR APPELLANT

VERSUS

THE REPUBLIC RESSPONDENT

RULING

10/9/2021 & 10/09/2021

W. R. MASHAURI, J;

Upon being dissatisfied with the judgment of the Geita Resident Magistrates' in Traffic Case No. 34 of 2020, the appellant Masoud s/o Haji @ Jubir has appealed to this court. He has filed three grounds of appeal to the effect that: -

1. The learned trial magistrate erred in law and fact by sentencing the appellant an excessive sentence without taking into consideration that the injury did not amount to grievous harm.

2. The learned trial magistrate erred in law and fact in failure to state/specify as to whether the sentence imposed on the appellant would run concurrently or consecutively.
3. The prosecution side did not prove their case beyond reasonable doubt.

The appellant in this appeal is represented by Mr. Beatus learned counsel and the respondent by Mr. Hemed Senior State Attorney.

It is common ground in this appeal that, having been served with notice of intention to appeal by counsel for the appellant titled in *"In the Resident Magistrates' court of Geita at Geita."* Mr. Hemed Senior State Attorney for the Republic Respondent filed and/or raised a preliminary objection to the effect that, the notice of an intention to appeal file by counsel for appellant with a title *"In the Resident Magistrates' court of Geita at Geita."*

That, as the intended appeal is against the decision of the trial court. The Resident Magistrates' court of Geita at Geita, the best practice which the learned counsel for the appellant ought to have followed was to title the Notice of Intention to Appeal *"IN THE HIGH COURT OF TANZANIA."*

In his written submission which was converted to oral submission upon requested the court to do so, the learned Senior State Attorney submitted that, although section 361(I)(a)(b) and (2) of the CPA Cap. 20 R.E. 2019 did not describe as to how the notice of an intention to appeal from the subordinate court to the High court should be titled or formatted, the Court of Appeal of Tanzania ever faced such problem in the case of **DPP V/s Sendi Wambura** and 3 others Criminal Appeal No. 480 of 2016 Bukoba Registry (unreported) in which the Court of Appeal directed at page II inter – alia thus: -

“....on line the Court of Appeal Rules, 2009, which stipulates clearly as to how the notice of appeal from the High court to the Court of Appeal should look like as per the format found in form B in the first schedule to the Tanzania Court of Appeal Rules, 2009 (The Rules). Rules 68 of the Rules provides as follows: -

68 (I) Any person who desire to appeal to the Court of Appeal shall give notice in writing, which shall be lodged in triplicate with the Registrar of the High court at the place where the decision against which it is desired to appeal was given within thirty days of the date of that decision and the notice of appeal shall institute the appeal.

section 68(2) to 68 (6) N/A

58 (7) A Notice of Appeal shall be substantially in the form B in the first schedule to these Rules and shall be signed by or on behalf of the Appellant '... whereby the notice of appeal from the high court to the Court of Appeal s titled" In the Court of Appeal of Tanzania..." Therefore, we propose to the relevant authority that, the notice of intention to appeal from the 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(I)(a) of the CPA. This should also be the case for notice of appeal lodged under section 361(I) of the CPA by the appellants.

Finally, the Court of Appeal of Tanzania concluded by saying that: -

"in view of the above stated circumstances, we find the notice of intention to appeal from the trial District court to the High court in the instant matter defective. We are therefore constrained to invoke our revisional powers conferred upon us under section 4(2) of the appellate Jurisdiction Act Cap. 141 R.E. 2002 to nullify the proceedings and judgment made by the High court and further order the proceedings of this case in the District court to proceed as the law directs."