

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(SONGEA DISTRICT REGISTRY)

AT SONGEA

DC. CRIMINAL APPEAL NO. 16 OF 2022

(Originating from Mbinga District Court in Criminal Case No.67/2021)

SADICK AUGUSTINO KAPINGA..... 1ST APPELLANT

HAMISI JULIUS KIPAKO2ND APPELLANT

VERSUS

THE REPUBLIC..... RESPONDENT

RULING

04.07.2022 & 15.07.2022

U. E. Madeha, J.

The Appellants have appealed against the decision of the Mbinga District Court in Criminal Case No. 67 of 2021. They were charged with the offence of theft contrary to sections 258(1) and 265 of the Penal Code Cap 16 [Revised Edition 2019]. It was alleged that on 28th day of February 2021 at Kihulila Village within the Mbinga District in Ruvuma region, the Appellants stole one motorcycle make Haojue with registration number MC 716 BLR valued at Tanzanian shillings one million three hundred thousand (tsh.1,300,000/=), the property of one Charles Yohana Majala.

During the trial the prosecution relied on the evidence of six (06) witnesses, one physical exhibit that is a motorcycle, and documentary exhibits which are PF3 and the certificate of seizure both received in evidence as exhibits P1, P2, and P3. In defense, the Appellants brought three (03) witnesses. In the end, the learned trial Resident Magistrate found that the case against the Appellants had been proved beyond reasonable doubt. He thus found the Appellants guilty and therefore proceeded to sentence them three (3) years imprisonment. The Appellants were aggrieved by the decision of the trial Court thus appealed to this Court.

At the hearing of the appeal, the Appellants appeared in person, that is to say, unrepresented fending for themselves, whereas the Respondent/Republic was represented by none other than the learned Senior State's Attorney, Ms. Shese Naimani.

Before hearing of the appeal, Ms. Shose Naimani raised a Preliminary Objection on the point of law that the appeal is improper before the Court as the Appellants have filed the notice of intention to appeal at the Mbinga District Court.

In her brief oral account, Ms. Shose Naimani submitted that the Appellant's notice of intention to appeal is defective because it has not

complied with the legal requirements of the law. She elaborated that the defect is on the title of the notice specifically on the place of the name of the Court. She contended that looking through the notice it is rightly filed in the District Court but the title in the notice was supposed to indicate in the High Court and not in the District Court. She contended that with such defect the notice cannot be cured since the notice of intention to appeal carries the foundation of the case hence the appeal has no legs to stand on. Eventually she asked the Court to dismiss the appeal.

To back up her submission she asked this Court to refer to the case of **Sendi Wambura and three (03) others**, Criminal Appeal No. 80 of 2016, in which the Court of Appeal ruled on how the notice of appeal was supposed to be written. She insisted that, it must be in the High Court of Tanzania whereby the notice of intention to appeal must be registered in the subordinate court that decided the case. Additionally, she made reference to the case of **Farijala Shabani Hussein and Others v. the Republic**, Criminal Appeal No. 274 of 2012 Court of Appeal of Tanzania at Dar-es-Salaam, where it was clearly stated that:

"Addressing now the preliminary point of objection raised by the respondent, we deem it opposite to begin by extracting the relevant section 361 (1) (a) of CPA which makes provision for giving of notice of intention to appeal.

361(1) subjects to the 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 to the trial subordinate Court within ten days from the date of finding, sentence of corporal punishment only, within three days of the date of such sentence [Emphasis supplied.]"

On their side, the Appellant had nothing useful to submit they prayed that the Court to assist them accordingly.

On my part, taking into consideration that the adjustment on the law regarding format of a notice to institute a criminal appeal is vivid and quite clear, as explained in the cases of **Sendi Wambura** (supra), and **Fidelis Mayombo** (supra) referred herein by the Counsel, thus without further ado, I hereby proceed to declare that the notice subject to discussion in this

appeal is defective in form and as a result, the appeal has been rendered incompetent.

On noting of the above, the appeal is hereby struck out, the Appellants are at liberty to commence a fresh process of institution of the appeal in accordance with the law.

DATED at SONGEA this 15th day of JULY, 2022



U. E. Madeha

**U. E. MADEHA
JUDGE
15.07.2022**