

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(SONGEA DISTRICT REGISTRY)

AT SONGEA

DC. CRIMINAL APPEAL NO.18 OF 2022

(Originating from Songea District Court Criminal Case No.41of 2021)

LUCAS MWAKISAMBWE..... APPELLANT

VERSUS

THE REPUBLIC..... RESPONDENT

RULING

22.07.2022

U. E. Madeha, J.

In the District Court of Songea, the Appellant was charged with the offence of rape contrary to *section 132 of Penal Code Cap 16 R.E. 2022* and sentenced to thirty years imprisonment. He appealed before this Court against the conviction and sentence of the District Court.

At the hearing of the appeal, the Appellant appeared in person, unrepresented defending himself, whereas the Respondent that is the Republic was represented by Mr. Frank Chonja, the learned State Attorney. The Appellant submitted that he had filed the notice of intention to appeal to the High Court instead of filling it to the subordinate Court. He prayed for his appeal to be heard on merit.

On other hand, Mr. Frank Chonja, submitted that, the Appellant had earlier filed a notice of appeal on 17.11.2021. The State Attorney raised a preliminary objection on the point of law that, the appeal is improperly before the Court as the Appellant did not file his notice of intention to appeal at Tunduru District Court but he filed the notice of intention to appeal at the High Court contrary to the provision of *Section 361 (1) (a) of the Criminal Procedure Act Cap 20 R.E. 2019*. He cited with approval the case of **Farijala Shabani Hussein and Others v. the Republic**, Criminal Appeal No. 274 of 2012 CAT at Dar-es-Salaam, it was 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."

In view of the above position rendered by the Court of Appeal in the case **Farijala Shabani Hussein** (Supra), I concur with the Senior State Attorney and find that the Appellant was required to file a notice of intention to appeal in the subordinate Court where he was convicted and was required to submit a notice of intention to appeal within ten days after the conviction.

From the Court records, the Appellant filed his notice of intention to appeal at the High Court instead of filing it to the trial court where he was convicted and sentenced, contrary to the requirements of the law. To wit, this appeal becomes incompetent before the Court. If the Appellant wants to preserve his rights to appeal, he has to file the application for the extension of time to file the notice of appeal out of time as prescribed by law prior to the institution of this appeal.

The act of the Appellant failing to file the notice of appeal at the subordinate Court renders the appeal incurably defective and as a result, the appeal has been rendered incompetent, and hence it is hereby struck out.

DATED and **DELIVERED** at **SONGEA** this 22nd day of **JULY** 2022.



A handwritten signature in blue ink, consisting of a series of loops and a long horizontal stroke, positioned above a dotted line.

U. E. MADEHA

Judge

22/07/2022