

IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)

AT DAR ES SALAAM

CRIMINAL APPEAL NO. 127 OF 2021

*(Originating from the District Court of Kibiti at Kibiti in Criminal Case
No.41 of 2021 before Hon. F.P. NTULO, RM)*

JINASA KAYENZI MASANJA..... APPELLANT

VERSUS

THE REPUBLIC..... RESPONDENT

RULING

3/11/2021 and 19/8/2022

LALTAIKA, J.:

The appellant, **JINASA KAYENZI MASANJA** was charged before the District Court of Kibiti at Kibiti with the offence of armed robbery contrary to section 287A of the Penal Code [Cap. 16 R.E. 2009]. The particulars of the offence were to the effect that on 10th day of March 2020 at Mkupuka within Kibiti District in Coast Region fraudulently and without bonafide claim of right [the appellant] did steal Tshs.4,000,000/= the property of **SHILINDE s/o RUYOMBIA** before and after such stealing did use a knife to threaten the victim to obtain the said property.

When the charge was read over to the appellant, he pleaded not guilty necessitating the trial to commence with prosecution case ending up when defence closed its case. Convinced that the prosecution had proved its

case beyond reasonable doubt, the learned trial Magistrate F.P. Ntulo sentenced the appellant to serve a fifteen (15) years imprisonment term. Aggrieved, the appellant has lodged before this court a petition of appeal comprised of six (6) grounds as follows: -

- 1. That, the trial learned Magistrate erred in law and fact to convict and sentence the appellant based on the prosecution evidence which is in variance with the charge.*
- 2. That, the trial learned Magistrate erred in law and fact to convict and sentence the appellant whilst the essential ingredients necessary to constitute armed robbery was not established and proved.*
- 3. That, the trial learned Magistrate erred in law and fact to convict and sentence the appellant based on the testimonies of PW1 and PW2 who were inconsistency and contradictory.*
- 4. That, the trial learned Magistrate erred in law and fact to convict and sentence the appellant in absence of the police officer who recorded the cautioned statement.*
- 5. That, the trial learned Magistrate erred in law and fact to convict and sentence the appellant without considering the defence of alibi.*
- 6. That, the trial learned Magistrate erred in law and fact to convict and sentence the appellant whilst the prosecution did not prove its case to the hilt beyond all reasonable doubts.*

On 1/11/2021 the respondent filed a Notice on a Preliminary Objection that the Notice of Appeal is incurably defective for not being properly titled. Thus, on 3/11/2021 the matter was called on for hearing of the preliminary objection whereupon, the appellant appeared in person,

unrepresented while the respondent Republic enjoyed the services of Ms. Mchami, learned State Attorney.

Submitting for the preliminary objection, the learned State Attorney argued that all Notices of Appeal emanating from the subordinate courts are supposed to be entitled **"In the High Court of the United Republic of Tanzania" followed by the Registry.** The learned State Attorney argued that the Notice of Appeal is filed in a concerned court say, District or RMs Court that entertained the case appealed against.

Ms. Mchami stressed that the present Notice of Appeal is titled "In the District Court/Resident Magistrate Court of Kibiti at Kibiti" arguing that the same is incurably defective. The learned State Attorney further insisted that the Notice of Appeal should be struck out and the appellant be given an avenue to bring about a properly titled Notice of Appeal. To substantiate her argument, she referred this court to the case of **Farijala Shabani Hussein and Another vs Republic**, Criminal Appeal 274 of 2012 CAT, Dar es Salaam(unreported).

Furthermore, Ms. Mchami argued that the decision above provided a grace period of six months during which all notices should be adopt the new format. The learned State Attorney stressed that the six months lapsed in April 2019. To this end, the learned State Attorney stressed that the present Notice of Appeal was filed on 30/9/2020. To that regard, the learned State Attorney submitted that the appellant was bound by the direction provided by the Court of Appeal. Ms. Mchami went on and stressed that since the Notice of Appeal is what institutes an appeal, this means that there is no proper appeal to be entertained by this court. Ms.

Mchami prayed this court to struck out this appeal for being improper in law.

In response, the appellant submitted by insisting this court to proceed with the hearing of his appeal. The appellant stressed that technical errors should not be used to deny his right.

I have gone through the submissions of the parties. From the outset it is uncontested that what the learned State Attorney has submitted that the Notice of Appeal filed by the appellant on 30/9/2020 is titled in the District/Resident Magistrate Court of Kibiti at Kibiti. As submitted by the learned State Attorney it is quite true that the Court of Appeal rectified the lacuna persisting under section 361(1)(a) of the Criminal Procedure Act [Cap.20 R.E. 2019] vide its decision in the cited case of **Farijala Shabani Hussein and Another vs Republic**

I am also aware that the Court of Appeal rendered its judgment on 25/4/2018, the decision of the Court of Appeal bears the grace period of six months from the date of that ruling. In that regard the ruling of the Court of Appeal became operative after six months from the date of the ruling which is 25/4/2019. Therefore, from 26/4/2019 the ruling of the Court of Appeal became in operative. It is undisputed that the appellant filed his Notice of Appeal on 30/09/2020 the period in which the six months grace period had already expired.

Pursuant to the directive of the Court of Appeal, it is quite clear that the appeal before this court is incompetent because it is featured with an incurably defective Notice of Appeal of the District/Resident Magistrate Court of Kibiti at Kibiti and not in the name and registry of this court.

Premised on the above, this appeal is hereby struck out for being incompetent. The appellant is at liberty to file a fresh Notice of Appeal as required by t law. In the meanwhile, the appellant shall remain in custody serving his sentence.

It so ordered.



E.I. LALTAIKA

JUDGE

19.8.2022