

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE SUB- REGISTRY OF MWANZA

AT MWANZA

HC. CRIMINAL APPEAL NO. 25 OF 2022

(Originating from Chato District Court Criminal Case No. 126 of 2021)

FABIAN S/O PHILIPO.....1ST APPELLANT

THOMAS S/O JAMES.....2ND APPELLANT

VERSUS

THE REPUBLIC.....RESPONDENT

RULING

18th & 19 July, 2022

DYANSOBERA, J:

The two appellants herein, were arraigned before the trial District Court charged with two counts in the following pattern. The duo was charged in the 1st count with gang rape while the 1st appellant was charged alone in the second count of impregnating a school girl contrary to section 60A of the Education Act [Cap. 353 R.E.2002] as amended by section 22 of the Written Laws (Miscellaneous Amendments) Act No. 2 of 2016. While the trial court found the charge against the 1st appellant in the second count not proved, the same court was satisfied that the charge against both appellants in the first count was proved to the hilt. The court consequently found them guilty, convicted them and awarded them a life imprisonment term.

They were aggrieved and appealed to this court challenging both the conviction and

On 18th day of July, 2022 when this appeal came up for hearing, Ms. Margareth Mwaseba, learned Senior State Attorney appeared for the respondent whereas the two appellants appeared on their own.

Before the hearing took off, the learned Senior State Attorney raised a point of law on the competence of this appeal. She submitted that the notices of intention to appeal by the appellants were filed in the District Court of Chato. She argued that that was wrong as the said notices had to be filed in the High Court, Mwanza where the appeal was being intended to be filed. She prayed this appeal to be struck out as the defective notices of appeal renders the appeal incompetent as this Court was not properly notified. She cited the case of case of **Director of Public Prosecutions v. Sendi Wambura and 3 Others**, Criminal Appeal No. 480 of 2016 CAT-at Bukoba (unreported) to buttress her argument.

The appellants, in their response were of not assistance to this court, they being laymen. The appellant told this court that he is ignorant of law. The 2nd appellant also told this court that he was not cognizant with the law.

In her brief rejoinder, Ms Margareth Mwaseba was of the view that the appellants' only option was to ask for leave to apply for extension of time to file both the notices of intention to appeal and the petitions of appeal.

I have considered the legal point raised by the learned Senior State Attorney and the record before me. It is not in dispute that the notice of intention of appeal filed by Fabian s/o Philipo dated 11th day of October, 2021 was titled 'in the District Court of Chato', presented to the District Court of Chato and hence filed thereat on 22nd day of October, 2021. Likewise, the notice of intention of appeal by Thomas s/o James was filed on 22nd day of October, 2021 in the District Court of Chato.

As rightly submitted by the learned Senior State Attorney, the notices of appeal were to be titled be titled **In the High Court of Tanzania** as it is the appellate court having jurisdiction to determine appeals from District Court or the Court of Resident Magistrate and not the District Court which convicted the appellants.

It is true that the law as it then existed did not give the format in which the notice of appeal should be drafted. However, as rightly pointed out by the learned Senior State Attorney, the Court of

Appeal came to the aid and gave directions. In the case of the **DPP v. Sendi Wambura and 3 others v. R.** Criminal Appeal No. 480 of 2016 (unreported), the Court of Appeal, at page 13 of the typed judgment observed:

"Therefore, we proposed to the relevant authority that the notice of intention to appeal from 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 (1) (a) of the CPA. This should also be the case for notice of appeal lodged under section 361 (1) of CPA by other appellants".

As the record shows, the notices of appeal which were titled "In the District Court of Chato were not properly titled and hence defective.

The defective notices of appeal rendered the appellants' petition of appeal incompetent.

Consequently, the point of law raised by the learned Senior State Attorney is sustained, the notices of appeal which are incurably defective and have rendered the appellants' appeal incompetent are struck out. Likewise, the appellants' appeal which is incompetent is also struck out.

The appellants are advised, if they so wish, to file applications seeking extension of time to file both the notices of intention to appeal and the petition of appeal.



W. P. Dyansobera

Judge

19.7.2022

This ruling is delivered at Mwanza under my hand and the seal of this Court on this 19th day of July, 2022 in the presence of both appellants and Mr. Deogratias Richard Rumanyika, learned State Attorney for the respondent.



W.P. Dyansobera
Judge