

THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

IRINGA DISTRICT REGISTRY

AT IRINGA

DC. CRIMINAL APPEAL NO. 63 OF 2021

**(Originating from Criminal Case No. 1 of 2020, In the District
Court of Iringa, at Iringa).**

ARNOLD EXAUD MLAY @ BIG APPELLANT

VERSUS

REPUBLIC..... RESPONDENT

RULING

24/08 & 7/09/2022.

UTAMWA, J.

In this first appeal, the appellant, ARNOLD S/O EXAUD MLAY @ BIG, challenges the judgment (impugned judgment) of the District Court of Iringa, at Iringa, (the trial court) in Criminal Case No. 1 of 2020. Before the trial court, the appellant stood charged with the offence of unnatural offence contrary to sections 154(1)(a) of the Penal Code, Cap. 16 R.E. 2002 (Now R.E. 2022). He pleaded not guilty to the charge. However, at the end of the full trial, he was convicted and sentenced to serve in prison for 30 years. He was also ordered to compensate the victim of the crime at the tune of Tanzanian shillings 2,000, 000/= (Two million).

During the hearing of this appeal, the appellant appeared in person and unrepresented. The respondent Republic was represented by Ms.

Jackline Nungu, learned State Attorney and Mr. Alex Mwita, Senior State Attorney (SSA) at different times.

However, before the appeal proceeded for hearing, the Republic raised a preliminary objection that the notice of appeal is defective due to the fact that it was filed in the Court of Resident Court of Iringa, at Iringa (The RM's Court) instead of the being filed in the trial court which decided the original case. The two learned State Attorneys for the respondent, at different times, essentially urged the court to strike out the appellant's appeal as the notice of intention to appeal was filed in the wrong court. The notice of appeal is required to be filed in the court which made the decision.

In reply, the appellant submitted that, he cannot be faulted as he is not responsible for filing the notice as he handed the notice to the prison officers. In his view the error is not fatal since it does not go to the root of the case.

Mr. Mwita SSA, by way of rejoinder, submitted that, the fact that the appellant is in prison means that the prison officers acted on his behalf. This cannot be the reason to breach the law. Moreover, the appellant's argument that the error does not go to the root of the case is not tenable because, it is the notice of appeal which institutes an appeal.

When examined by the court, the learned SSA submitted that, he is aware of the decision by the Court of Appeal of Tanzania (The CAT) in the case of **Republic v. Geofrey Mwesigwe, Criminal Appeal No. 355 of 2014, CAT at Bukoba** (unreported) which held that, where an appellant signs a notice in time, but the prison officers file the notice in court out of time, then the appellant is not to blame. He distinguished the **Mwesigwe case** with the present case as the issue here is not on time limitation.

I have considered the law, record and submissions by both parties. The issue here is *whether the appeal is competent for the preliminary objection raised*. I have perused the record and noted that, it actually,

shows that the appellant's notice of intention to appeal was filed in the RM's Court as per the rubber stamp showing the court which received it and the date of receiving it. This was irrespective of the fact that the present appeal originates from the decision of the District Court (the trial court) as shown earlier. The parties do not also dispute that the notice of intention to appeal ought to have been filed in the trial court (the District Court). Indeed, the law requires a notice of intention to appeal to be filed in the subordinate court which passed the impugned judgment. This is in accordance with section 361(a) of the Criminal Procedure Act, Cap. 20 as construed by the CAT in the **Mwesige case**.

It follows, therefore, that the appellant had to comply with the requirement of the law. The procedure adopted by him was thus, fatal since the notice is a very important document in an appeal process as rightly submitted by the respondent's Attorneys. The CAT emphasized the importance of the notice of appeal when it held in the case of **Hassan Jumanne @ Nsingwa v. Republic, Criminal appeal No. 290 of 2014, CAT at Tabora** (unreported) that, the notice of appeal institutes the appeal in both the High court of Tanzania and the CAT.


The contention by the appellant that the error is not fatal is not therefore, tenable. Again, his argument that he cannot be blamed for the irregularity since he handed the notice to prison officers for submitting it in court is not helpful to him. This is because, since the law was violated, there is no excuse for doing so whether the violation was committed by the appellant himself or by prison officers. No one between them is above the law. The issue here is not who is to blame, but whether the law was complied with. It is more so in the case at hand because, the notice itself does not indicate as to which court it had been addressed. It follows thus, that, the reason that the appellant is not to blame for the anomaly may constitute a good ground for him in an application for extending time for filing a proper notice of appeal and an actual appeal out of time. Such reason cannot be an adequate warrant for breaching the law the way the appellant did.

In total therefore, I find the appeal incompetent for the notice being filed in a wrong court as rightly argued by the learned Attorneys for the respondent in the preliminary objection. I consequently strike out the appeal for incompetence. The appellant may wish to file a proper notice of appeal and an appeal in accordance with the law, subject to the law on time limitation. It is so ordered.



JHK UTAMWA
JUDGE
07/09/2022

Court: ruling pronounced in court in the presence of the appellant and Ms. Blandina Manyanda, State Attorney, for the respondent, this 7th September, 2022.



Sgd: J. H. K. Utamwa
Judge
07/09/2022