

**THE UNITED REPUBLIC OF TANZANIA**

**JUDICIARY**

**IN THE HIGH COURT OF TANZANIA**

**IRINGA DISTRICT REGISTRY**

**AT IRINGA**

**DC. CRIMINAL APPEAL NO. 25 OF 2022**

**(Originating from Criminal Case No. 190 of 2020, In the District Court of Mufindi District, at Mafinga).**

**JUMA KADEGE..... APPLICANT**

**VERSUS**

**REPUBLIC..... RESPONDENT**

**RULING**

**19<sup>th</sup> September & 21<sup>st</sup> September, 2022.**

**UTAMWA, J:**

The appellant, JUMA KADEGE was aggrieved by the judgment of the District Court of Mufindi District, at Mafinga (The trial court), and he now appeals to this court. Before the trial court, the appellant was charged with and convicted of the offence of rape contrary to Section 130(1), (2), (e) and 131(1) of the Penal Code, Cap. 16 R.E 2019. He pleaded not guilty hence a full trial. He was found guilty and sentenced to serve thirty years imprisonment, hence this appeal.

When the appeal was called upon for hearing, this court noted that, the petition of appeal is an uncertified photocopy. It then invited the

parties to address it on the whether the appeal is competent due to that reason.

The appellant submitted that, he drafted his original petition of appeal while in Isupilo prison and filed it. He thus, prayed for the court to consider his appeal.

On the other hand, Mr. Vincent Masalu, learned State Attorney submitted that, the appeal is incompetent since it was filed by way of photocopy and the there is no original petition of appeal. There is thus, no any appeal before this court since the court cannot act on uncertified photocopy of the petition of appeal. He thus, urged the court to strike out the appeal and direct the appellant to bring an original petition of appeal subject to law on limitation.

In his rejoinder submissions, the appellant insisted his prayers made in his submissions in chief. He added that, the prison officers in Isupilo prison informed him that they filed in court original documents and not photocopies.

I have considered the arguments by the parties, the record and the law. The main issue for determination is *whether the appeal at hand is competent on the basis of being instituted by an uncertified photocopy of the petition of appeal*. According to sections 361 and 362 of the Criminal Procedure Act, Cap. 20, RE. 2022 an appellant in appeals of this nature has to file his petition of appeal in writing and the same has to be presented by the appellant or his advocate in court. The law thus, envisages that an original petition of appeal should be presented in court showing un-

ambiguously that it has been filed by the appellant or his advocate. The same must thus, bear an original signature of the petitioner or of his advocate to indicate that it has been signed by either of them. It is the original document duly signed which shows authentically that it is the appellant who in fact appeals. Otherwise, there is a likelihood for an appellant to disown the appeal in case of negative results. It follows therefore, that, the appellant in the case at hand had to comply with the requirements of the law highlighted above, and could not have filed the uncertified copy of the petition of appeal.

In my further view, putting reliance on photocopy of the petition of appeal is unsafe because, photocopy documents can easily mislead the court for representing different contents from the contents in the original document. It is more so when such photocopy is uncertified as a true copy of the original like the petition of appeal at issue. The allegation that the appellant handed his original petition of appeal to the prison authorities cannot be a good excuse for offending the law because, such officers are not above the law. This could be a good ground for the appellant in an application for extending time for filing a proper petition of appeal out of time, and not for condoning such an improper format of the document. Indeed, I also underlined this view against courts relying upon uncertified petitions of appeals of the nature under discussion in another appeal. I did so in the case of **Roti Mang'ela v. Republic, Criminal Appeal No. 8 of 2015, High Court of Tanzania, at Tabora** (unreported), and I repeat the same in the case at hand.

Owing to the reasons shown above, I answer the main issue posed earlier negatively that, the appeal at hand is incompetent for being instituted by uncertified photocopy of the petition of appeal. I consequently strike out the appeal at hand. The appellant may wish to file a proper (original) petition of appeal in accordance with the law, subject to the law on time limitation. It is so ordered.

  


JHK UTAMWA  
JUDGE  
21/9/2022

21/09/2022.

CORAM: JHK. Utamwa, J.

Appellant: present (By virtual court while in Iringa prison).

Respondent: Mr. Vincent Masalu, State Attorney (present physically).

BC: Gloria, M.

Court: Ruling delivered in the presence of the appellant (by virtual court while in Iringa prison) and Mr. Vincent Masalu, learned State Attorney for the respondent, this 21<sup>st</sup> September, 2022.

  


JHK UTAMWA  
JUDGE  
21/09/2022.