

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE SUB-REGISTRY OF DAR ES SALAAM**

AT DAR ES SALAAM

CRIMINAL APPEAL NO. 69 OF 2022

MWASITI ATHUMAN JUMA APPELLANT

VERSUS

THE REPUBLIC.....RESPONDENT

**(Appeal from the decision of the District Court of Kinondoni
at Kinondoni in Criminal Case No. 159 of 2020)**

RULING

15th and 15th September, 2022

KISANYA, J.:

This appeal originates from the decision the District Court of Kinondoni sitting at Kinondoni (Hon. D.D. Mlashani -RM) dated the 16th day of November, 2021, in Criminal Case No. 159 of 2020. In that decision, the trial court convicted the above named appellant for the offence of child stealing contrary to section 169(1) of the Penal Code, Cap. 16, R.E. 2019 (now R.E. 2022) and sentenced her to imprisonment for a term of four (4) years.

Aggrieved, the appellant through the legal services of Mr. Peter Wandiba, learned advocate filed the present appeal. For the reasons to be apparent in this ruling, I find no need of reproducing the grounds of appeal listed in the petition of appeal.

When this appeal came up for hearing on 12th September, 2022, the Court noticed that the record had no notice of intention to appeal. In that

regard, parties were probed to address the court on the competence of the appeal. Mr. Wandiba who appeared for the appellant prayed for time to make follow up of the record.

When the hearing resumed today, the appellant appeared in person. She was also presented by Mr. Wandiba, learned advocate, while Ms. Lilian Rwetabura, learned Senior State Attorney appeared for the respondent.

From the very outset, Mr. Wandiba conceded that the record is silent on whether the appellant gave the notice of intention to appeal required under section 361(1) of the CPA. However, he prayed to withdraw the appeal. That prayer was not contested by Ms. Rwetabura.

On my part, the issue raised by the Court is based on section 361(1) (a) of the CPA which stipulates:

"361(1).- Subject to 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 within ten days from the date of the finding, sentence or order or, in the case of a sentence of corporal punishment only, within three days of the date of such sentence;

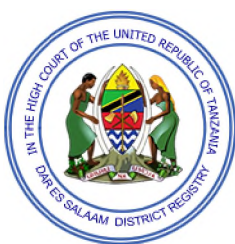
Reading from the above cited provision, it is apparent that this Court has no mandate to entertain an appeal against the decision of the district court or Court of Resident Magistrate, in the exercise of its original jurisdiction, if the appellant has not given a notice of his or her intention to appeal. In the

consequence, an appeal which is not preceded by the notice of intention to appeal given with ten days from the date of impugned finding, sentence or order is incompetent before the court.

As hinted earlier, it is common ground in the present case that the appellant did not give the notice of intention to appeal in accordance with the law. Pursuant to section 361(1)(a) of the CPA, her appeal cannot be entertained by this Court for being incompetent. Pursuant to the trite law, the proper remedy against an incompetent matter is to strike out the same. Such matter cannot be amended, adjourned or withdrawn. For that reason, Mr. Wandiba prayer to withdraw this appeal cannot be granted.

All said and done, this appeal is hereby struck out for being incompetent. The appellant is at liberty to file a fresh appeal after complying with the law.

DATED at DAR ES SALAAM this 15th day of September, 2022.



S.E. Kisanya
JUDGE

Court: Ruling delivered this 15th day of September, 2022 in the presence of the appellant in person, Mr. Petet Wandiba, learned advocate for the appellant, Ms. Lilian Rwetabura, learned Senior State Attorney for the respondent and Ms. Bahati, court clerk.



S.E. Kisanya
JUDGE
15/09/2022