

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(DAR ES SALAAM DISTRICT REGISTRY)

AT DAR ES SALAAM

CRIMINAL APPEAL NO. 203 OF 2021

(Originating from Criminal Appeal No. 32 of 2020 in the District Court of Temeke at Temeke)

CHACHA KITALAYA APPELLANT

VERSUS

THE REPUBLIC RESPONDENT

RULING

26th September, 2022.

MWANGA, J.

The Appellant, Chacha Kitalaya was charged and convicted by the Primary Court of Mbagala of robbery Contrary to Section 286 of the Penal Code, Cap. 16 [R.E. 2019] and sentenced to 15 years of imprisonment.

Upon his dissatisfaction, he appealed to the District Court of Temeke on the whole judgement of the Primary Court. The District Court upheld both conviction and sentence of the trial court, hence this second appeal to the High court.

In his notice of appeal to this court dated 11th March, 2021 it indicated that the appellant appealed the decision of the district court against the Republic and not the person who initiated the criminal proceedings in the Primary Court.



When the matter was called on for hearing on 26th September, 2022, Mr. Mwasimba, learned Senior State Attorney raised a pertinent point of law that, the appeal is incompetent before for misjoinder of parties. He argued that, the Republic/DPP was wrongly joined in the matter, since the criminal proceedings giving rise to this appeal originated from the primary court. He added that, the appellant was supposed to lodge the notice of appeal against one Juliana Daniel, who instituted criminal proceedings against him at the primary court.

In support of his contention, he referred this court in Section. 20 (1) (a) of the Magistrate Court Act, Cap. 11 [R.E 2019], which require parties to prosecute or defend their own criminal cases originated from the primary court, unless otherwise, by notice in case the PDD want to be joined. He therefore prayed to this court to struck out the appeal for it being incompetent.

The Appellant, not being represented in this court, showed inability to contest on this matter. He stated that, since it's a matter of law, he leaves the same for the court to decide.

I have gone through Sections. 20(1) (a) and 25 (1) (a) of the Magistrate Courts Act, Cap. 11 [R.E 2019] and found out that, the readings of both provisions substantiated the view of the learned State Attorney that in criminal proceedings giving rise to the appeal originated




in the primary court be prosecuted or defended by the complainant himself. In the case of **Gaspar Simon Shituhu and Another V. Republic**, Criminal Appeal No. 124 of 2017 TZCA (Unreported), the court held that:-

'The DPP may only be served to appear in the high court as a party in a case which originated in the primary court only if he is the appellant or when he has served notice that he wishes to be heard.'

With the above legal requirements and authorities so cited, I am convinced that, for this appeal to be competent, the complainant Juliana Daniel shall be joined and served with summons to prosecute her case. In the aftermath, I struck out the appeal for it being incompetent. I further direct that the appellant may initiate the required legal process to pursue his appeal in accordance with the law.

It is so ordered.




H. R. MWANGA

JUDGE

26/09/2022

ORDER:

Delivered in Chambers this 26th day of September, 2022 in the presence of Mr. Mwasimba, learned Senior State Attorney and the respondent.




H.R. MWANGA

JUDGE

26/09/2022