

**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. 41 OF 2022

GOODLUCK PATRICE NGIMBA APPELLANT

VERSUS

THE REPUBLIC.....RESPONDENT

**(Appeal from the decision of the District Court of Ilala at Kinyerezi in
Criminal Case No. 643 of 2019)**

RULING

28th and 28th October, 2022

KISANYA, J.:

At the District Court of Ilala at Kinyerezi, Goodluck Patrice Ngimba was charged with an offence of stealing by agent contrary to section 273(b) of the Penal Code, Cap. 16, R.E. 2002 (now. R.E. 2022). It was averred in the charge sheet that, on unknown date in February, 2018 within the City and Region of Dar es Salaam, the appellant did steal different types of drinks valued at TZS, 36,700,000/= which was entrusted to him by Jumuiya ya Wakulima Zanzibar (JUWAZA).

The appellant pleaded not guilty and the case proceeded to trial. At the end of the trial, the trial court was satisfied that the prosecution had proved its case beyond all reasonable doubts. It went on convicting the appellant as charged and sentencing him to serve imprisonment for a term of five (5) years.

In addition to the said custodial sentence, the appellant was ordered to pay JUWAZA compensation to the tune of TZS 36,700,000.

Not amused, the appellant has filed an appeal to this Court on thirteen grounds of appeal. I find no need of reproducing the grounds of appeal due the reasons that will be apparent in this ruling.

Suffice to say that the appeal was initially heard 15th September, 2022 during which the appellant appeared in person while the Respondent enjoyed the legal services of Mr. Tumaini Mafuru, learned State Attorney.

In the course of composing the judgment, I noticed that the notice of intention to appeal against impugned decision was made by way of letter addressed to the Resident Magistrate, Ilala District Court at Kinyerezi. In that regard, I wanted to satisfy myself on two issues namely, whether the notice of intention to appeal is valid; and if the answer of the first issue is not in affirmative, whether the appeal is competent before this Court.

Therefore, when the matter came up for judgment today, I found it appropriate to probe the parties to address the Court on the foresaid issues. The appellant appeared in person whereas Ms. Yasinta Peter, learned Senior State Attorney, represented the respondent

Responding to the said issues, the learned Senior State Attorney was of the view that the notice of intention to appeal was filed the time specified under section 361(1) (a) of the Criminal Procedure Act, Cap. 20, R.E. 2022 (the CPA).

However, she submitted that the said notice of intention to appeal is defective for being addressed to the trial court. It was her contention that the notice of intention to appeal ought to have been addressed before the High Court and filed in the trial court. That being the case, she moved this Court to strike out the appeal for being accompanied by a notice of intention to appeal that is defective.

On his part, the appellant was in agreement with the learned Senior State Attorney that his notice of intention to appeal was filed within the time specified by the law. He conceded that the notice of intention to appeal was addressed to the trial court. However, he contended that he was not aware of the proper format of the notice of intention to appeal and the lodged notice of appeal was prepared by the prison authority. In the result, the appellant asked the Court to give decision on the defect that it can be cured.

Having considered the parties' submissions, I am now ready to determine the issues raised by the court, *suo motto*. It is worth noting here that the said issues are premised on section 361(1) (a) of the CPA which provide, *inter alia*, that, this Court cannot entertain an appeal against any finding, sentence or order made by the subordinate court in the exercise of its original jurisdiction unless the appellant has given a notice of his intention to appeal within ten days from the date of the impugned finding, sentence or order.

It is also worth noting that the CPA does specify the manner in which the notice of intention should be drafted appeal. However, the law is now settled

that, though the notice of intention is lodged in the subordinate court which passed the impugned decision, it must be titled "In the High Court of Tanzania".

I am fortified by the case of **Sendi Wambura and 3 Others vs R.** Criminal Appeal No. 480 of 2016 (unreported), in which the notice of intention to appeal to this Court was titled "In the District Court of Bukoba". When the matter reached the Court of Appeal, it was underlined that:-

"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".

That position was also stated in the case of **Farijala Shaban Hussein and Another vs. R.**, Criminal Appeal no. 274 of 2012, CAT at DSM (unreported) in which the Court of Appeal underlined that:-

*"On our part we are of the settled view that this controversy need not detain us. Having prescribed the title: In the High Court of Tanzania with respect to the notice under section 379 (1) (a) in the referred case of **DPP versus Sendi Wambura**, for purposes of enhancing consistency and certainty in the procedural requirements, we are minded to adopt the format which was prescribed therein and, as such, a written notice of intention to appeal under section 361 (1) (a), should, accordingly be titled "In the High Court of Tanzania."*

As hinted earlier, the notice of intention to appeal in this case is a letter with reference No. 112/DAR/5/IX dated 24th February, 2021 which was addressed to the Resident Magistrate, Ilala District Court, at Kinyerezi. That fact is not disputed by the appellant. It follows therefore, that there is no notice of intention to appeal that was addressed to this Court. Being guided by the above position of law, I find the notice of intention to appeal to be defective.

Having resolved that the notice of intention to appeal is defective, the present appeal is incompetent. This is because this Court has no mandate to entertain an appeal that is not preceded by the notice of intention appeal. Since the issues raised by the Court, *suo mottu*, are sufficient to dispose of this matter, I find no need of determining the appeal on merits.

In the upshot and for the foresaid reasons, this appeal is hereby struck out for being incompetent.

On the way forward, I would have advised the appellant to lodge an application for extension of time to give the notice of intention to appeal. However, I have considered the respondent does not dispute that the purported notice of intention to appeal was given within time specified by the law. It is also on record that, at one point time in time, the appellant was granted by this Court, leave to file a petition of appeal out of time. In the circumstances and for the interest of justice, I find it just to order that, the applicant may, if still interested to pursue the matter, give or file the notice of intention to appeal

and a petition of appeal within ten (10) days and twenty (20) days, respectively, from the date of this ruling.

It is so ordered.

DATED at **DAR ES SALAAM** this 28th day of October, 2022.



S.E. KISANYA
JUDGE