

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE SUB- REGISTRY OF MANYARA

AT BABATI

CRIMINAL APPEAL NO. 12 OF 2023

(Originating from District Court of Simanjiro in Economic Case No. 32 of 2021, Before
Hon. M. J. Masao-RM dated 30th November 2022)

EPHRAHIMU LOTHAA MOLLEL.....1ST APPELLANT

DENIS HERMAN LUKUMAY.....2ND APPELLANT

VERSUS

REPUBLICRESPONDENT

RULING

Date: 16/3/2023 & 6/4/2023

BARTHY, J.

The appellants named above were arraigned before Simanjiro District Court (hereinafter referred as the trial court) faced with one count of unlawful possession of Government trophy contrary to Section 86 (1) (2)(b) of the Wildlife Conservation Act No. 5 of 2009 read together with paragraph 14 of the first schedule to and Section 57(1) and 60(2) and (3) of the Economic and Organized Crime Control Act [CAP 200 R.E 2019].

It was alleged before the trial court that on 4/4/2021 at Namalulu village, the appellants were found with giraffe meat valued at Tsh. 34,306,635/-.



The appellants denied the charge, the full trial ensued and at the end the appellants were found guilty and sentenced to pay fine at the tune of Tsh. 102,919,905/- or to twenty years imprisonment each.

The appellants dissatisfied with the trial court conviction and sentence meted against them, they preferred the instant appeal with six grounds of appeal which will not be reproduced here.

At the hearing, in appearance were the appellants in person and Ms. Veronica Katwale learned state attorney for the respondent.

Before hearing of the appeal had commenced, Ms. Katwale stated the appeal is not competency before this court. She argued that, it is only the first appellant who filed the notice of intention to appeal. The second appellant did not file notice of intention to appeal.

She further argued that, Section 361 1 (a) of the Criminal Procedure Act [CAP 20 R.E 2019], (the CPA) requires notice of intention to appeal to be filed. Failure to lodge the notice of appeal renders the appeal incompetent. She thus prayed to the court to dismiss the appeal.



The first appellant on his reply had no much to say. On the side of the second appellant, he claimed to have filed his notice of intention to appeal while in the prison. However, he could not show any proof for the same.

Having gone through the rival submissions of the parties, I have keenly gone through the petition of appeal as well as the original record of the trial court in order to verify if the second appellant had real filed the notice of intention to appeal.

Since the second appellant never supplied the court with proof that he had lodged notice of intention to appeal before lodging this appeal, still the same could not be found on the record of the trial court as well. It is therefore with no doubt that, the second appellant never filed notice of intention to appeal.

Having found that the second appellant did not give notice of intention to appeal the important question to be addressed by this court is, what is the remedy?

The provisions of Section 361 (1) (a) of the CPA, provides for the procedure for instituting an appeal to the High Court which reads that;



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

[Emphasis added].

In the cited provision of law above, it calls in a mandatory compliance by the parties and the court. Appreciating the wording of the law above, the reference is made to the case of **Salimu Alphan v. Republic**, Criminal Appeal No. 547 of 2016 (unreported) the court interpreted the use of the word "shall" used in Section 361 (1) of the CPA as follows;

Where the word "shall" has been used in an enactment, in terms of the provisions of section 53 (2) of the Interpretation of Laws Act, Cap 1 R.E 2002, it connotes that compliance is imperative.

Since the requirement of the law is requiring the notice of intention to appeal to be filed within ten days from the impugned decision or have the appeal filed within time, failure to do so renders the appeal incompetent.

As decided in the case of **Ntiranyabagira F. Kuteleza @ Robert**



Mwami v Republic, Criminal Appeal No. 161 of 2006 (unreported), the court held that:

"Failure to give written intention of notice to appeal within ten days deprives the High Court power to entertain the appeal. "

The effect of lodging the appeal without filing the notice of intention to appeal has been stated in a number of cases including the case of **Salimu Alphan v. Republic**, (supra), where the consequences of the High Court in determining a criminal appeal which is not preceded by a notice of appeal it was held that:

In the same breath; since in the instant appeal the appellant did not lodge notice of appeal before lodging his appeal to the High Court; we are constrained to agree with the contention of the learned State Attorney that; the first appellate Court in entertaining the appeal, embarked on a nullity, and as such, the said proceedings cannot be left to stand...."

In upshot and for foregoing since the second appellant did not file notice of intention to appeal, the instant appeal is rendered incompetent for the

second appellant, it is therefore struck out against him. Hearing of the appeal will proceed in respect of the first appellant.

It is so ordered.

Dated at Babati this 6th April 2023.



G. N. BARTHY

JUDGE

6/4/2023

COURT: Ruling delivered at Babati this 6th April, 2023 in the presence of the appellants and Ms Veronica Katwale State Attorney.

B.A.MPEPO,
DEPUTY REGISTRAR
06/04/2023.