

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE SUB-REGISTRY OF MANYARA
AT BABATI**

CRIMINAL APPEAL NO. 64 OF 2023

(Arising from the District Court of Mbulu at Mbulu in Criminal case No. 67 of 2022)

**PAULO FRANCIS.....1ST APPELLANT
RAMPHIL GWIDIN.....2ND APPELLANT**

VERSUS

THE REPUBLICRESPONDENT

RULING

10th & 18th October, 2023

Kahyoza, J:

This is a ruling in respect of the preliminary objection, that the appeal is competent for want of the notice of appeal. The appellants' advocate opposed the preliminary objection.

Briefly, the facts are that; Paulo Francis and Pamphil Gwaidin were convicted with the offence of armed robbery and sentenced to 30 years. Aggrieved, Paulo Francis and Pamphil Gwaidin lodged a notice of appeal to the District Court and later instituted the appeal to this Court.

Before hearing commenced, Ms. Blandina, the learned state attorney raised a preliminary objection that the notice of appeal was defective as it was addressed to Mbulu District Court instead of being addressed to the High

Court. To support her contention, she cited the case of **DPP V. Sendi Wambura and 3 others**, Criminal Appeal No. 480 of 2016.

The appellants' advocate Mr. John Lundu opposed the preliminary objection contending that, **one**; it was baseless as a technical issue ought to be discouraged and **two** that since the appellant were permitted to give an oral notice of appeal to the same court where they addressed the notice of appeal. He prayed the preliminary objection to be overruled. He also added that the case cited was distinguishable as it refers to the notice of appeal from the High Court to Court of Appeal, while the notice of appeal under consideration refers to the notice of appeal from the District Court to the High Court.

In her short rejoinder, the state attorney insisted that the notice of appeal was defective.

Having considered rival submissions, I wish to state at the outset that a person aggrieved by the conviction and sentence or by either conviction or sentence can only appeal to the High Court after lodging a notice of appeal. See section 361 of **the Criminal Procedure Act**, [Cap. 20 R. E. 2022] (the **CPA**). There is no dispute a notice of appeal may be made orally before the magistrate who passed the sentence or in writing. Admittedly, the **CPA** does not provide the form on how of the written notice of appeal should appear.

However, the Court of Appeal in **DPP V. Sendi Wambura and 3 others** (Supra) and **Farijala Shabani Hussein and another**, Criminal Appeal No. 274 of 2021 prescribed the format of written notice of appeal. In the later case, the court of appeal held that;-

"In this regard, Mr. Pande invited us to embark on our own construction of section 361(1) (a) to which we are properly seized and make provision for the format of the notice of appeal. We entirely agree, more particularly, given the reality that parliament did not specifically prescribe the format to be taken by a written notice of intention to appeal. We are indeed, alive to truism that often times, either deliberately or inadvertently, Parliament enacts provisions generally or with a vague wording with a view for the courts to fill in the gaps in the course of its construction.

*As can be clearly discerned from the learned rival arguments from either side, the pith of the controversy here lies not in the ambiguity of the provisions of section 361(1)(a) of the CPA as such, rather, it is aroused by the apparent omission by the legislature to prescribe the format to be taken by a written notice of intention to appeal. Whereas the respondent takes the position that such notice should be titled: **"In the High Court of Tanzania,"** Mr. Magafu for the appellants is adamant that the notice should be titled as it presently is, that is, in the subordinate court.*

On our part, we are of the settled view that this controversy need not unnecessarily 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 Vs. Sendi Wambura**, for the 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.**"*

Given the position taken by the Court of Appeal in **Sendi Wambura and 3 others, Farijala Shabani Hussein and another and in DPP V. Fidelis Albert Mayombo and 3 others V. R.**, Criminal Appeal No. 340 of 2019, it is settled that a written notice of appeal has to be titled "**In the High Court of Tanzania**" but it must be lodged in subordinate court. The appellants in the present case declared the intention to appeal in writing. However, they did address the notice of appeal to the District Court instead of the High Court. Thus, the notice of appeal is defective. It is as if, they never declared their intention of appeal. It is settled there would be no appeal when there is competent notice of appeal. Consequently, I declare the appeal incompetent for want of a notice of appeal and struck it out.

It is ordered accordingly.

Dated at **Babati** this 18th day of **October**, 2023.





J. R. Kahyoza.

Judge.

Court: Ruling delivered in the presence of Ms. Leah Josea, state attorney for the respondent and the appellants. B/C Ms. Fatina present.



A handwritten signature in black ink, appearing to be "J. R. Kahyoza", written over a horizontal line.

J. R. Kahyoza.

Judge.

18/10/2023