

**IN THE HIGH COURT OF TANZANIA**

**GEITA SUB-REGISTRY**

**AT GEITA**

**CRIMINAL APPEAL NO. 41191 OF 2024**

**MAWAZO KANYAZILA@ JULIUS.....APPELLANT**

**VERSUS**

**THE REPUBLIC.....RESPONDENT**

**RULING**

**MHINA, J.**

I could not do better than preface this Ruling on preliminary objection challenging the competence of this appeal with this simple but apparently pertinent question: What is the notice of appeal?

Though the ***Criminal Procedure Act, Cap 20 R: E 2022*** does not explicitly define the term notice of appeal but, under sections 361 and 379 of the same Act, the provisions indicate that;

*A notice of appeal is an intention to appeal by a person aggrieved by the Court's decision.*

Simply in other words, *the notice of appeal is a document filed to initiate the appeal process in court, letting the court and the other side know that a person is appealing the court's decision.*

To appreciate the merits or otherwise of the preliminary objection, a tale on the background of the matter will be necessary.

The appellant was charged in the Courts of Resident Magistrate of Geita in Criminal Case No. 53 of 2023 with the offence of Rape contrary to ***sections 130 (1), (2) and 131 (3) of the Penal Code, Cap 16 of the Laws.*** The allegations were that on 10 May 2023 at Soweto - Mwatulole Area within the District and Region of Geita, the accused person raped a girl aged eight (8) years old.

After a full hearing and at the end of the trial, the appellant was convicted of the charged offence and was sentenced to a mandatory life imprisonment.

Undaunted, the appellant, on 11 October 2023, filed a notice of appeal at the High Court of Mwanza to indicate his desire to appeal. The notice was received at the Court of the Resident Magistrate of Geita, because then it was under the High Court of Mwanza.

On 29 December 2023, the appellant filed his petition of appeal in this High Court of Geita with six (6) grounds of appeal.

Today when the appeal was called on for hearing Ms. Verena Mathias, learned State Attorney raised a preliminary objection regarding the competence of this appeal.

She submitted that the notice initiating this appeal was defective in the manner that the notice was filed at the High Court of Mwanza on 11 October 2023, while the petition of appeal was filed in this Court on 29 December 2023.

Therefore, she argued that the proper registry to file the petition of appeal was the High Court of Mwanza and not the High Court of Geita.

Her reason was that the High Court of Geita came into operation on 1 December 2023 following Government Notice No 853B dated 22 November 2023, which established the High Court of Geita. Therefore, no notice of appeal has been filed in this Court, while filing a notice of appeal is a mandatory requirement. To support her argument, he cited the decision of the Court of Appeal in **Elly Millinga vs. Republic**, Criminal Appeal No. 268 of 2014, on page 10.

She prayed the appeal be struck out for being incompetent.

On his side, the appellant, who appeared in person, unrepresented, did not object to the objection raised. He only wanted to know where he would be taken to the High Court of Mwanza for the hearing of his appeal.

Having considered the oral submission by the parties, though the preliminary objection was conceded still it is important for this Court to look into the objection and determine its merit or demerit.

Therefore, the issue that has to be resolved is;

*"Whether or not the appeal is incompetent for want of proper notice of appeal".*

In deliberation and determination of the issue, I have the following;

**One**, on what the law says regarding the notice of appeal and petition of appeal. On this, I will start by quoting Section 359 (1) of the CPA. The law reads;

*"Save as hereinafter provided, any person aggrieved by any finding, sentence or order made or passed by a subordinate court other than a subordinate court exercising its extended powers by virtue of an order made under section 173 of this Act may appeal to the High Court and the subordinate court shall at the time when such finding, sentence or order is made or passed, inform that person of the period of time within which, if he wishes to appeal, he is required **to give notice of his intention to appeal and to lodge his petition of appeal**".*

**[Emphasis provided]**

Further, section 361(1) states that;

*"Subject to subsection (2), an appeal from any finding, sentence or order referred to in section 359 shall not 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; and (b) **has lodged his petition of appeal within forty-five days** from the date of the finding, sentence or order".*

**[Emphasis provided]**

Flowing from above it is quite clear that the places of filing/registry of filing the notice of appeal and petition of appeal are inseparable. First, an aggrieved party shall file a notice within ten days of the decision and then a petition of appeal within 45 days from the date of the decision.

Therefore, the petition of appeal should be filed after the notice has been filed and at the same registry. This is because it is the notice that initiated the appeal process and later a petition of appeal that contains grounds for appeal.

Based on the discussion above, a party cannot file a notice of appeal and petition of appeal regarding the same matter in separate court registries.

Here the logic is simple that the petition of appeal follows the notice of appeal.

Therefore, filing the notice of appeal at the High Court of Mwanza and Petition of appeal in this Court is unprocedural, and the effect is that no notice of appeal was filed in this Court in respect of the petition of appeal filed on 29 December 2023. Then, this appeal before this Court is obviously incompetent.

**Two**, as rightly submitted by Ms. Mathias, learned State Attorney, the High Court of Geita was established on 1 December 2023 by Government Notice No 853B dated 22 November 2023.

Therefore, anything filed before 1 December 2023 is invalid; before that date, the High Court of Geita did not exist.

Thus, the notice dated 11 October 2023 could not in any way be valid to initiate an appeal at this Court, which was established on 1 December 2023. The effect is that there is no notice of appeal to support the petition filed in this Court on 29 December 2023.

From the elaboration above, the appeal is incompetent; thus, the preliminary objection is sustained.

As a way forward, the appellant is advised to pursue his appeal at the High Court of Mwanza, where he lodged his notice of appeal on 11 October 2023. This applies also to those who had already filed their notice of appeal at the High Court of Mwanza before the establishment of the High Court of Geita on 1 December 2023; they should pursue their appeals at Mwanza, where they lodged their notices.

In the upshot, the appeal is struck out for being incompetent.

It is so ordered.



**K.D. Mhina**  
**JUDGE**

**At Geita**

**13<sup>th</sup> February, 2024**