

IN THE HIGH COURT OF TANZANIA

TANGA SUB REGISTRY

AT TANGA

CRIMINAL APPEAL NO. 68 OF 2023

HARITH LADISLAUS PATRICK.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Arising from Criminal Case No. 82 of 2022 of the District Court of Tanga at Tanga)

RULING

25/04/2024 & 02/05/2024

NDESAMBURO, J.:

The appellant stood trial in Criminal Case No. 82 of 2022 before the District Court of Tanga, facing charges of robbery under sections 285(1) and 286 of the Penal Code. After thorough deliberation of the evidence presented by both sides, the trial court found the prosecution's case convincing beyond a reasonable doubt, resulting in the appellant's conviction and sentencing him to a seven-year prison term.

Being dissatisfied with both the conviction and the sentence, the appellant, on the 10th of August 2023, lodged a notice of intention to appeal. The notice is cited as "In the District Court of

Tanga at Tanga." Recognizing this error, the appellant's learned counsel prayed to correct it and proceed with the appeal process. However, his prayer faced opposition from the learned State Attorney representing the Respondent/Republic, leading to this ruling.

The appellant is represented by Mr. Ahmed Abdallah, a learned counsel, while Mr. Kullaya, a learned State Attorney accompanied by Ms. Kaswela appeared for the Respondent/Republic.

Mr. Abdallah succinctly presented his argument, stating that on the 10th of August 2023, the appellant issued a notice of intention to appeal. However, a crucial error was made in the heading of the notice, which indicated "In the District Court of Tanga at Tanga" instead of "In the High Court." Mr. Abdallah urged the court to invoke the principle of the overriding objective and permit the appellant to amend the notice of intention to appeal and the court to proceed with the hearing of the appeal.

In contrast, Mr. Kullaya opposed Mr. Abdallah's plea, contending that the appeal is incompetent because the notice of an intention to appeal lodge by the appellant to initiate the current

appeal is defective and in violation of sections 379(1)(a) and 361(1) of the Criminal Procedure Act, Cap 20 R.E 2022. He urged this court to strike the appeal with leave to refile. Mr. Kullaya bolstered his argument by referencing the decision of this court in **DPP v Denis Gaudence Shirima**, Criminal Appeal No. 39678/2023.

In rejoinder, Mr. Abdallah reiterated his initial submission.

The appeal to the High Court from the subordinate court by the convicted person is governed by sections 359(1) and 361(1)(a) of Cap 20 which stipulate:

359.-(1) 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.

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 or..."

From the aforementioned provisions, it is evident that the appellant seeking to appeal against any finding, sentence, or order from the subordinate court to the High Court must lodge notice of the intention to appeal within ten days.

After considering the arguments presented by both parties and reviewing the appellant's notice of appeal, as noted above the heading reads "**In the District Court of Tanga at Tanga**", the question before this court pertains to whether this notice of intention to appeal is indeed defective.

In the case of **DPP v Mawazo Saliboko @ Shagi and Others**, Criminal Appeal No. 08 of 2022, the Court of Appeal encountered a situation closely resembling the current matter. In that case, the notice of appeal filed by the Director of Public Prosecution was titled "the Nzega District Court" instead of "The High Court of Tabora at Tabora". The court's decision on this issue is noteworthy:

*"...subsequent to the cases of **Sendi Wambura** and **Farijala Shabani Hussein**, which were decided in 2018,*

it is now settled law that any notice of intention to appeal to the High Court must be titled, 'in the High Court of Tanzania' and then filed at the trial subordinate courts.

Based on the precedent outlined in the aforementioned authority, it is imperative that all notices of appeal, seeking to appeal from subordinate courts to the High Court, must bear the title "In the High Court of Tanzania." The Court of Appeal emphasized that this standardization is crucial to maintain consistency and certainty regarding the format of notices of intention to appeal filed in the High Court against decisions of trial subordinate courts, whether by the Director of Public Prosecution or prison inmates.

Applying the principles established in the cited case and upon careful examination of the notice in question, which indeed bears the heading "**In the District Court of Tanga at Tanga**" instead of "In the High Court of Tanzania," it becomes evident that the notice contravenes of the aforementioned decision. Consequently, I concur with Mr. Kullaya's assertion that the notice of intention to appeal lodged by the appellant is indeed defective.

Mr. Abdallah requested this court to invoke the principle of the overriding objective and permit the appellant to amend the notice. However, the principle of the overriding objective cannot be invoked in this instance appeal to bypass established procedural rules as this principle cannot be blindly applied at the expense of established rules of procedure: **Mondoros Village Counsel and 2 Others v Tanzania Breweries Ltd & 4 Others**, Civil Appeal No. 66 of 2017 CAT (unreported).

Given the foregoing considerations, this court is left with no alternative but to strike out the appeal, and accordingly, it is hereby struck out.

It is so ordered.

DATED at **TANGA** this 2nd day of May 2023



A handwritten signature in blue ink, appearing to be "H. P. Ndesamburo".

H. P. NDESAMBURO

JUDGE