

**IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)**

AT DAR ES SALAAM

CRIMINAL APPEAL NO. 174 OF 2022

(Arising from the Resident Magistrate's Court of Dar es Salaam in the Criminal Case No. 60 of 2021)

CHRISTINA LUDOVICK KAALE. APPELLANT

VERSUS

THE REPUBLIC RESPONDENT

RULING

03rd & 05th April, 2023

BWEGOGGE, J.

The appellant herein above named, together with one Edwin John Makene, were arraigned in the Resident Magistrate's Court of Dar es Salaam (Kisutu) for three counts of the offence of use of documents intended to mislead principal contrary to section 22 of the Prevention and Combating of

Corruption Act, No. 11 of 2007 (the PCCA) and one count of embezzlement and misappropriation contrary to section 28 (1) and (3) of the Prevention and Combating of Corruption Act, No. 11 of 2007 (the PCCA). Upon conclusion of the trial, the appellant was convicted and sentenced in all four counts whereby the co-accused, one Edwin John Makene, was acquitted on all counts. The appellant was aggrieved by the conviction and sentence entered by the trial court. Hence, this appeal.

The respondent resisted the appeal by filing a notice of preliminary objection on the ground that the appeal is incompetent for contravening the provisions of section 361(1)(a) of the Criminal Procedure Code Act [Cap. 20 R.E. 2022] (the CPA).

The preliminary objection was disposed of by oral submissions. The respondent was represented by Ms. Lizabeth Mkunde, learned State Attorney, whereas the appellant enjoyed the service of Mr. Gideon Opande, learned advocate.

Arguing in support of the preliminary objection, the respondent submitted that it has been discovered that the notice of appeal was lodged on 03/08/2022 in the Resident Magistrate's Court of Dar es Salaam, at Kisutu,

is titled "in the Resident Magistrate's Court of Dar es Salaam" contrary to the law. That the law indicates that the notice of appeal should indicate "in the High Court" as required by section 361(1) (a) of the CPA. The attorney cited the case of **Farijala Shaban Hussein & Another vs. Republic**, Criminal Appeal No. 274 of 2012, CAT (unreported) to buttress the point. On this ground, the attorney contended that the purported notice of appeal is defective and cannot initiate the appeal herein.

In reply, the counsel for the appellant submitted that, the raised objection is misconceived and misleading. That the cited provision of the law, section 361(1)(a) of CPA doesn't support the preliminary objection as it has nothing to do with the title/ heading of the notice of appeal. That the cited case has not been supplied in court for him to scrutinize the same. The counsel opined that the cited case doesn't support the objection.

Further, the counsel submitted that the proceedings of the lower court (at page 69) bear the records that the appellant notified the trial court that she intended to appeal against the judgment. Thus, the notice of appeal was issued on 28/7/2022 as per sect 361(1)(a) of CPA. therefore, there is a valid notice of intention to appeal to this court. Hence, on above premises, the counsel prayed the purported preliminary objection to be overruled.

In the rejoinder, the learned state attorney reiterated her submission in chief which I find it needless to replicate herein.

The point of determination is whether the preliminary objection is merited.

The impugned notice of intention to appeal was filed under the provision of section 361 (1)(a) of the CPA. The relevant provision provides thus:

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.....

The above cited section of the law requires the appellant to provide his notice of intention to appeal but it does not give the format in which the notice of appeal should be presented. However, the Court of Appeal has provided directions regarding the same in the case of **Farijala Shaban Hussein** (*supra*) in which it was instructed 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 lower court.

On the basis of the directives of the Apex Court, the learned state attorney resisted this appeal on the ground that it was defective. The counsel for the appellant replied that the provision of section 361(1)(a) of the CPA has nothing to do with the title of the notice of intention to appeal and apart from that, the appellant herein had made oral notice of intention to appeal before the trial court on 27/8 2022. Thus, it suffices the requirement of section 361(1)(a) of CPA.

I have gone through the trial court proceedings, specifically at page 69 of the same. I have found that, the appellant herein, through her advocate, Mr. Massawe, gave an oral notice of the appellant's intention to appeal to the High Court of Tanzania. The appellant's oral notice was recorded by the trial magistrate to that effect.

Based on the record of the trial court mentioned above, I need not further delve into the alleged defectiveness of the written notice. As the above cited provision of the law doesn't make a mandatory requirement for the appellant to provide written notice of intention to appeal, it follows that, the notice may be expressed orally.

Suffices to point out that the appellant herein had given an oral notice of intention to appeal prior to the filing of the allegedly defective notice in the trial court. Therefore, in the circumstances of this case, the prior oral notice of intention to appeal suffices the requirement of the law. In the case **Msafiri Hassan Masimba vs. Republic**. Criminal Appeal No 425 of 2007 (2013) TZCA 377, which was also cited in the case of **Mtani Alfred vs. Republic**, Criminal Appeal No. 262 OF 2009, (2012) TZCA 227, it was held;

"Even an oral notice of intention to appeal given to the trial court or the prison officer on admission into prison will suffice."

In view of the foregoing reasons, I find that the preliminary objection on point of law advanced by the respondent Republic has no substance. The objection is hereby overruled.

So ordered.

Dated at Dar es Salaam this 05th April, 2023.




O. F. BWEGOGGE
JUDGE