

## LEGAL PRINCIPAL DISCUSSED

Citation	Parties	Legal Principles Discussed
<p>IN THE COURT OF APPEAL OF TANZANIA AT DODOMA.</p> <p>CRIMINAL APPEAL NO. 161 OF 2008.</p> <p>KILEO J.A, MASSATI J.A AND ORIYO J.A.</p>	<p><b>RAMADHANI MSIMBE VS THE REPUBLIC.</b></p> <p>(Appeal from the Decision of the High Court of Tanzania at Dodoma, Kwariko J.)</p>	<p>1. The Law does not require or impose a duty to file any notice of intention of appeal. For the moment there is no law providing for a particular format in which a notice of intention to appeal under section 361 (1) (a) of the Criminal Procedure Act. Even oral notices of intentions to appeal given at the time the judgment is pronounced are legally permissible.</p>

**IN THE COURT OF APPEAL OF TANZANIA  
AT DODOMA**

**(CORAM: KILEO, J.A., MASSATI, J.A. And ORIYO, J.A.)**

**CRIMINAL APPEAL NO. 161 OF 2008**

**RAMADHANI MSIMBE.....APPELLANT  
VERSUS  
THE REPUBLIC.....RESPONDENT**

**(Appeal from the Decision of the High Court of Tanzania  
at Dodoma)**

**(Kwariko, J.)**

**Dated 3<sup>rd</sup> day of October, 2007  
in  
Criminal Appeal No. 90 of 2006**

**RULING OF THE COURT**

10<sup>TH</sup> & 17<sup>TH</sup> March, 2010

**MASSATI, J.A.:**

The Appellant herein was charged with and convicted of the offence of Armed Robbery contrary to sections 285 and 286 of the Penal Code (Cap 16-RE 2002), by the District Court of Manyoni. He was sentenced to 30 years imprisonment. The judgment of the trial Court was delivered on 21/3/2006. The record of the trial Court shows that after sentencing the

Appellant, and explaining his right of appeal, the Appellant is recorded to have said:

"I shall appeal"

On 11/9/2006, he filed a memorandum of appeal in the High Court, Dodoma. The appeal was assigned to Lila, J. On 25/6/2007, Lila, J, after hearing both the Appellant and the Respondent / Republic, on whether the Appellant "filed" a notice of intention to appeal, gave the following order:

"There is no notice of intention to appeal filed by the appellant. Filing of notice of intention to appeal within ten days from the date of sentence, or lower court finding is a mandatory requirement under section 361 (1) (a) of the Criminal Procedure Act 1985. As there is none in record, this appeal is incompetently before this Court. The appeal is accordingly struck out for want of notice of intention to appeal. If the appellant, as correctly argued by learned state attorney, still wishes to pursue his right of appeal he should abide with the

law in that he has to file an application praying for leave of the court to file the notice of intention to appeal out of time.”

Pursuant to the advice of the court, the Appellant filed a chamber application in the High Court for leave to file a memorandum of appeal out of time, under Article 13 (6) (a) of the Constitution of the United Republic of Tanzania and S. 359 (1) of the Criminal Procedure Act. That application was dismissed by Kwariko, J. on 3/10/2007. Strangely, on 4/7/2007 the Appellant filed a Notice of Appeal to this Court against the decision of Kwariko, J. “given at Dodoma, 3<sup>rd</sup> day of July, 2007”. But we think that there must have been some typographical errors and confusions. What is to be noted is that, following the filing of that Notice of Appeal, the present appeal was instituted.

When the appeal was called on for hearing, Mr. Faraja Nchimbi, the learned State Attorney, who appeared for the Respondent Republic rose to argue preliminary objections, notice of which he had filed and served on

the Appellant. This notice contained two points, but at the hearing, he dropped the second one, and argued the remaining one which was:

“(a) The instant appeal is improperly before this Honorable Court for want of a memorandum of appeal”

He submitted that the record shows that the Appellant was served with the record of appeal on 14/11/08, but he filed his memorandum of appeal on 9/3/2010, contrary to Rule 72 of the Court of Appeal Rules,(the Rules) 2009, which requires that the memorandum should have been filed within 21 days of the receipt of the record. So, there was no memorandum of appeal legally before the Court. So he concluded that the appeal is incompetent and so should be struck out, unless the Court is minded to exercise its powers under Rule 72 (5) of the Rules and proceed to hear the appeal.

We then asked the learned counsel, whether Lila, J’s decision was correct that there was no notice of intention to appeal. After perusing the

record and the provisions of section 361 (1) (a) of the Criminal Procedure Act, the learned counsel readily conceded that the law does not require a notice of intention to appeal under S. 361 (1) (a) of the Criminal Procedure Act to be in writing. In so far, as the Appellant had signified his intention to appeal to the trial court, that was sufficient; and so Lila, J. and Kwariko, J. had misapprehended the law. In the premises, he urged us to exercise our powers of revision, quash the decisions of the High Court and remand the appeal back to the High Court for hearing.

As this was a point of law the Appellant did not have much to say.

In **KASSANA SHABANI and RAJABU HUSSEIN v R** Criminal Appeal No. 476 of 2007 (Unreported) this Court had the opportunity to discuss the import of section 361 (1) (a) of the Criminal Procedure Act 1985. On pages 7 and 8, of its judgment, it said:

“.....the law does not require or impose a duty to file any notice of intention of appeal. As we understand, for the moment there is no law

providing for a particular format in which a notice of intention to appeal under this subsection should be in. That is why even oral notices of intentions to appeal given at the time the judgment is pronounced (to appeal) (sic) are legally permissible.”

We are in entire agreement with that observation, and we shall apply it in the present case.

As shown above, immediately after the judgment was pronounced, the Appellant intimated his intention to appeal, and the trial court so recorded. This, in our view, and as observed in **KASSANA SHABANI's** case was sufficient, since the Appellant had no duty to **file a written notice** of intention to appeal. Lila, J's order to strike out the appeal before him was therefore made in error. Similarly, the proceedings before Kwariko, J. and the subsequent decision to dismiss the application for extension of time in which to lodge a memorandum of appeal were

therefore misconceived. Both decisions of the High Court are therefore invalid in law.

As this point was not raised by the parties in this appeal, in the interests of justice, we have decided to exercise our revisional powers under section 4 (2) of the Appellate Jurisdiction Act (Cap 141-RE 2002) and revise the proceedings of the High Court. Because we have held that those decisions are invalid in law, they are accordingly quashed and set aside. We order that the memorandum of Appeal lodged by the Appellant before Lila, J; be remanded back before the High Court for hearing according to law and by a judge other than, the two who had handled the matter before.



DATED AT DODOMA this 12<sup>th</sup> day of March, 2010.

E. A. KILLO  
**JUSTICE OF APPEAL**



S. A. MASSATI  
**JUSTICE OF APPEAL**

K. K. ORIYO  
**JUSTICE OF APPEAL**

I certify that this is a true copy of the original.

A handwritten signature in black ink, appearing to read "E. Y. Mkwizu", is written over a horizontal line.

E. Y. MKWIZU  
**DEPUTY REGISTRAR**