

CRIMINAL APPEAL NO. 204 OF 2004 – COURT OF APPEAL OF TANZANIA AT DAR ES SALAAM MSOF J.A, KAJI, J.A AND RUTAKANGWA J.A	Mohamed Dadi ndalimo Vs The Republic (Appeal from the rulling of High Court of Tanzania at Mtwara (kaganda J)	Unlike under the Tanzania Court of Appeal Rules, 1979 the provision of section 359(1) of Criminal Procedure Act (Cap 20 R.E 2002) does not provide for a format of notice of intention to appeal, a letter would serve the purpose in the circumstances see SIASA MPINGE Vs. Republic, Criminal Appeal No.9 of 2003 (unreported).
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**IN THE COURT OF APPEAL OF TANZANIA  
AT DAR ES SALAAM**

**( CORAM: MSOFFE, J. A. KAJI, J. A. And RUTAKANGWA, J. A. )**

**CRIMINAL APPEAL NO. 204 OF 2004**

**MOHAMED DADI NDALIMO..... APPELLANT**

**VERSUS**

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

**(Appeal from the Ruling of the High  
Court of Tanzania at Mtwara)**

**(Kaganda, J.)**

**dated the 21<sup>st</sup> day of September, 2004  
in**

**Misc. Criminal Application No. 11 of 2003**

**JUDGMENT OF THE COURT**

**12<sup>th</sup> December, & 18<sup>th</sup> 2007**

**MSOFFE, J. A.:**

On 5/7/2000 the District Court of Newala convicted the appellant of the offence of rape contrary to Sections 130 and 131 of the Penal Code as amended by Sections 5 (2) (e) and 6 (1) of the Sexual Offences Special Provisions Act No. 4 of 1998. It sentenced him to a thirty years term of imprisonment and corporal punishment of twelve strokes of the cane. Thinking that he was late in appealing, on 16/10/2003 the appellant filed an application in the High Court at Mtwara seeking extension of time to file a "notice of appeal with reference No. 112/MTW/2/V/95 dated on 12/7/2000". In a Ruling delivered on 21/9/2004 the High Court (Kaganda,J.) dismissed the application. In dismissing the application, the Judge opined and held, *inter alia*, as follows:-

"... This court has in its **several decisions** held that letters to show intention to appeal cannot be equated to notice of appeal. It was therefore not sufficient for the Prisons Officer to send a mere letter, he was supposed to lodge the actual notice before him."

(Emphasis supplied).

We wish to pause here and observe that the Judge did not cite any of the “several decisions” of the High Court which she had in mind. Anyhow, the appellant is aggrieved, hence this appeal. He appeared in person. Mr. Boniface, learned Principal State Attorney, represented the respondent Republic.

Mr. Boniface argued in support of the appeal. He urged that the letter mentioned above, being an intention to appeal, was sufficient notice in law. Hence that, looking at the matter from this perspective the appellant was in fact not late in filing a notice of appeal to the High Court. He accordingly invited us to allow the appeal.

With respect, we agree with Mr. Boniface for reasons which we will demonstrate hereunder.

As observed by this Court in **Siasa Mpinge V Republic**, Criminal Appeal No. 9 of 2003 (unreported), unlike under the

Tanzania Court of Appeal Rules, 1979, there is no format of a notice of appeal under the Criminal Procedure Act (Cap 20 R.E.2002), hereinafter the Act. **Section 359 (1)** of the Act provides:-

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 supplied).

For our purposes, the catchwords in the above provisions are “to give notice of his intention to appeal”. What is required is to give notice of **intention** to appeal. The section does not provide for a format of the notice of intention to appeal. A letter would, therefore, serve the purpose in the circumstances.

In this case, there is no dispute that the Judgment of the District Court was delivered on 5/7/2000 in the presence of the appellant. The appellant was duly informed of his right of appeal to the High Court against the judgment in question. On committal to prison, the appellant expressed an intention to appeal to the High Court. On 12/7/2000 the prison authorities wrote a letter Ref. No. 112/MTW/2/V/95 in which the appellant’s intention to appeal was expressed. The letter was, in the circumstances, sufficient notice in law.

As it happened, the letter was written on 12/7/2000 which was only seven days or so after the decision sought to be appealed against was delivered. It follows, therefore, that the notice of

intention to appeal was given within the period of ten days prescribed under **Section 361(1)(a)** of the Act. In the circumstances, the application for extension of time to file a notice of appeal was uncalled for and the High Court Judge ought to have found and ruled that much.

For the above reasons, we allow the appeal, quash and set aside the decision of Kaganda,J. We accordingly order that the appeal be returned to the High Court at Mtwara where the appellant will be free to seek extension of time to file a petition of appeal beyond the forty five days period prescribed under **Section 361 (1) (b)** of the Act. Once he does so, we hope, the appeal will be heard on merit as soon as possible.

DATED at DAR ES SALAAM this 18<sup>th</sup> day of December, 2007.

J.H. MSOFFE  
**JUSTICE OF APPEAL**

S.N. KAJI  
**JUSTICE OF APPEAL**

E.M.K. RUTAKANGWA  
**JUSTICE OF APPEAL**

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

I.P. KITUSI  
**DEPUTY REGISTRAR**