

TANZANIA / JUDGMENT

MARCO KAYUNGILO

COURT
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18 September 2024

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA IN THE SUB - REGISTRY OF SHINYANGA AT SHINYANGA PC. CRIMINAL APPEAL NO. 22198 OF 2024 REF. NO. 202408062000022198 (From Criminal Appeal No. 000019387 of 2024 Meatu District Court, Original Criminal Case No. 15 of 2024 at Mwandoya Primary Court) MARCO KAYUNGILO
..... APPELLANT Versus SAMWEL PETER
RESPONDENT

RULING

16thOctober & 16th October, 2024. S.M. KULITA, J. The records transpire that the Appellant herein was the Respondent in the Criminal Case No. 15 of 2024 at Mwandoya Primary Court, in Meatu District. It was about Criminal Trespass, Malicious Damage to Property and Stealing, alleged to have been committed by the Appellant. The said Appellant was convicted on all three counts and sentenced accordingly. Aggrieved with the decision of the Primary Court, the appellant lodged an appeal at the District Court in vein. Still aggrieved, the Appellant knocked the door of this court for the 2nd bite. 1 However, his appeal before this court has been attacked with the Preliminary Objection on point of law by the Respondent herein, that the Appeal is incompetent for being wrongly filed before this Court instead of the District Court. It was ordered that the Preliminary Objection be entertained through written submissions. However, only the Respondent complied with the scheduling order. The Appellant didn't lodge the written submission nor did he turned up to court thereafter. His Advocate, Mr. Elias Lugomela, also didn't show up. The matter was therefore determined ex-parte against the Appellant. In his written submission the Objector/Respondent argued that the Appeal before this Court is incompetent for being wrongly filed in this Court. He said that, by virtue of section 25(3) of the Magistrates' Courts Act [CAP 11 RE 2019] together with Rule 6(3) & (4) of the Judicature and Application of Laws (Criminal Appeals and Revisions in proceedings Originating from primary Courts) Rules GN NO. 390 of 2021 which guides the means of appealing at High Court for the matters originating from Primary Courts, the said appeal was 2 supposed to be lodged at the District Court in which the trial Primary Court is located. The Respondent further stated that the key word that has been used in the above said provision is "shall". He narrated that, in terms of Section 53(2) of the Interpretation of Laws Act [Cap 1 RE 2002] the word "shall", when used in the written Law, indicates that the application is imperative or mandatory. He said that, it is a word of command or order, and one which must be given a compulsory meaning. The Respondent went on to

submit that, as the said provision is coached in a mandatory term, it should be strictly adhered. He added that the section provides on how to go about if someone wants to appeal to the High Court for the cases originating from Primary Courts. It is the submission of the Respondent that Rule 6(3) & (4) of the Judicature and Application of Laws (Criminal Appeals and Revisions in proceedings Originating from Primary Courts) Rules, GN. NO. 390 of 2021 provides that the petition of appeal has to be filed in the District Court for it to be endorsed then it is to be dispatched to the High Court. He further argued that, but in the matter at hand the said appeal was not filed in the District Court as the petition of appeal 3 bears nothing which shows that it was filed in the District Court, rather it shows that it was filed in the High Court, instead. The Respondent concluded by praying for this court to sustain the ground of Preliminary Objection and accordingly dismiss the appeal. As there was no reply from the Appellant, my analysis will thus base only on the Respondent's written submission. Upon going through the Respondent's written submission, as well as the records that I have, I can vividly note that the appeal at hand was actually lodged at the High Court Registry. This can be seen in the e-CMS which shows that the petition by the appellant herein was lodged on line at the High Court Registry on the 18th day of September, 2024. As rightly submitted by the Respondent, that, Section 25(3) of the Magistrates' Courts Act [CAP 11 R.E 2019] together with Rule 6(3) & (4) of the Judicature and Application of Laws (Criminal Appeals and Revisions in proceedings Originating from Primary Courts) Rules, GN. NO. 390 of 2021 which guides the means of lodging appeals at High Court for the matters originating from Primary Courts, provides that, such appeals should be lodged at the District Court in which the trial Primary Court is located. 4 The said Section 25(3) of the Act reads as I hereunder quote; "Every appeal to the High Court shall be by way of Petition and shall be filed in the district court from the decision or order in respect of which the appeal is brought" [emphasis is mine]. Rule 6(3) of the Judicature and Application of Laws (Criminal Appeals and Revisions in proceedings Originating from primary Courts) Rules, GN. NO. 390 of 2021 provides for the same procedural means of filing appeals at High Court for the cases originating from Primary Courts, that the petition of appeal has to be filed in the District Court. The said provision further provides that, upon receiving the said Petition, the District Court has to endorse it, then the said court dispatches it to High Court. The said Rule 6(3) states; "The District Court shall, when a petition of appeal to the High Court is filed in the District Court, cause the date of filing to be endorsed on the petition before dispatching it to the High Court" As for the matter at hand, the said appeal was directly lodged at High Court Registry instead of the District Court. The petition of appeal bears 5 nothing which shows that it was filed in the District Court, rather it shows that it was filed in the High Court instead. Further, the fact that the Appellant has not turned up to court to resist this argument, the implication is that he admits the fault that he has done. Be it noted that this requirement of the law being coached with the mandatory term "shall", unless it has been otherwise interpreted in a particular section, basically its implication is mostly regarded mandatory as per Section 53(2) of the Interpretation of Laws Act [Cap 1 RE 2002]. As for the matter at hand, the fact that the Appellant has not turned up to court to challenge this issue, I can't side with the contrary meaning. It is my standing point that the Appellant was supposed to lodge his PC. Appeal at the District Court as stipulated under the Provisions that I have stipulated herein above. In upshot I find the Preliminary Objection

meritorious, that, this PC. appeal has been wrongly lodged at the High Court Registry instead of the District Court. The same is therefore struck out. 6 S.M. KULITA JUDGE 16/10/2024 7

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