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DIRECTOR OF PUBLIC PROSECUTIONS *v.* THOMAS MOLLEL *alias* ASKOFU

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COURT OF APPEAL OF TANZANIA
AT ARUSHA

(Makame, Kisanga, and Lugakingira, JJ.A.)

CRIMINAL APPEAL No. 30 OF 1998

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(From the Judgment of the Resident Magistrates' Court of Arusha at Arusha, Rugazia, PRM, Extended Jurisdiction, dated 14 September 2001, in Criminal Appeal No. 3 of 1997)

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Criminal Practice and Procedure – Appeals – Appeals by the Director of Public Prosecutions – Notice of Appeal filed by the Regional Crime Officer –

Whether such appeal properly before the Court – Sections 279, 370 and 379(a) of the Criminal Procedure Act 1985.

Criminal Practice and Procedure – Appeals – Notice of Appeal by the Director of Public Prosecutions – Meaning of Director of Public Prosecutions – Section 377 of the Criminal Procedure Act 1985.

Statute – Interpretation of statute – Cross references to sections in the same statute – The Criminal Procedure Act 1985 – Meaning of the word "section" in section 377 of the Criminal Procedure Act 1985.

A Notice of Appeal was lodged in the Resident Magistrate's Court with extended jurisdiction by a Regional Crime Officer (RCO) to challenge a decision of a Subordinate Court. The RCO purported to file that Notice under section 379(a) of the Criminal Procedure Act 1985. The Resident Magistrate's Court, extended jurisdiction, struck out the appeal, holding that the appeal was not properly before the Court. The Director of Public Prosecutions appealed.

Held: (i) section 370 of the Criminal Procedure Act 1985 confers on the High Court jurisdiction to hear appeals from the Subordinate Courts; and section 379(a) of the Act provides that an appeal to the High Court is to be initiated by the Director of Public Prosecutions giving notice of his intention to do so;

(ii) The Regional Crime Officer (RCO) may have been appointed a public prosecutor by the Director of Public Prosecutions (DPP) either under General Notices 135 and 382 of 1941 and 1943, respectively, or under section 95 of the Criminal Procedure Act but not every public prosecutor so appointed is empowered to give the requisite notice; section 377 of the Act defines "Director of Public Prosecution" to include any officer subordinate to him, acting in accordance with his general or special instructions;

(iii) For purposes of appeals under the Act the meaning of the words "Director of Public Prosecutions" should include a public prosecutor only if such a public prosecutor is an officer subordinate to the Director of Public Prosecutions and is acting under his general or special instructions; it cannot include public prosecutors appointed in different ministries, departments or sections throughout the country, who are not necessarily officers subordinate to Director of Public Prosecutions but are subordinate to some other officials, in which case they would not be competent to give the requisite Notice of Appeal;

(iv) In this case there was no evidence to show that the RCO who gave the Notice of Appeal was subordinate to the Director of Public Prosecutions; the RCO, therefore, was not the Director of Public Prosecutions within the meaning of the section;

(v) To read the word "section" appearing in the first line of section 377 in its present form would mean that the provision is targeting or is directed to only the section immediately after it, i.e. section 378, and such formulation is grammatically unsound and clumsy. For, if the provision had targeted section 378 only, the use of the words "of this part unless the context otherwise requires" would be both superfluous and meaningless; the word should read "sections" to mean that the interpretation of "Director of Public Prosecutions" applies to the remaining sections of Part X(c) of the Act.

(vii) In the result the High Court rightly struck out the appeal.

Appeal dismissed

Statutory provisions referred to:

(1) Criminal Procedure Act 1985 section 95,370, 379(a), section 377 part X(c)

(2) Government Notices Number 135 of 1941 and 382 of 1943

Mrs Lyimo, Principal State Attorney, for the Director of Public Prosecutions

Mr Jundu, for the Respondent

JUDGMENT

(Dated 14 September 2001)

Kisanga, J.A.: The Director of Public Prosecutions is appealing against the decision of the Court of Resident Magistrate (Rugazia PRM) with extended jurisdiction, striking out an appeal on the ground that the said appeal was not properly before the Court because the Notice of Intention to bring it had not been given by the Director of Public Prosecutions.

Section 370 of the Criminal Procedure Act 1985 (hereinafter referred to as the Act) confers on the High Court jurisdiction to

hear appeals from the Subordinate Courts; and section 379(a) of the Act provides that an appeal to the High Court is to be initiated by the Director of Public Prosecutions giving Notice of his Intention to do so. That provision says:

> 379 No appeal under section 370 shall be entertained unless the Director of Public Prosecutions;
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> (a) shall have given notice of his intention to appeal to the Subordinate Court within thirty days of the acquittal, finding, sentence or order against which he wishes (to) appeal.

In this case the Notice of Intention to Appeal was given by the Regional Crimes Officer (RCO) of Arusha Region, and the question both in the Court below and in this Court was whether that constituted Notice of Intention to Appeal within the meaning of the above quoted provision. As already stated the Court below held that it did not.

Before us the appellant Republic was represented by Mrs Lyimo, Principal State Attorney, while Mr Jundu, advocate, was for the respondent. Mrs Lyimo maintained that the notice given by the RCO constituted the requisite notice under section 379(a) of the Act that the appeal was properly before the Court and that the Court, therefore, erred in striking it out. She cited various provisions of the law including sections 2, 95, 377 and 396 of the Act and Government Notices 135 of 1941 and 382 of 1943 to support her thesis that the RCO was a Public Prosecutor acting under general directions of the Director of Public Prosecutions and therefore entitled to give the requisite notice. Mr Jundu took the opposite view and supported the decision of the Court below.

We agree with Mrs Lyimo that the RCO was, or can be said to have been appointed public prosecutor by the Director of Public Prosecutions either under Government Notice Numbers 135 and 382 of 1941 and 1943 respectively, or under section 95 of the Act. Indeed this question was not seriously in issue either before us or in the Court below. However, it is apparent that not every public prosecutor so appointed is empowered to give the requisite notice.

This is apparent from reading section 377 of the Act which falls under Part X(c) thereof with the heading "Appeals by Director of Public Prosecutions." section 377 which comes immediately after that heading says:

> 377. In the following section of this Part unless the context otherwise requires – 'Director of Public Prosecutions' *shall include any officer subordinate* to him acting in accordance with his general or special instructions; [emphasis supplied]

Our construction of this provision is that for purposes of appeals under the Act by the Director of Public Prosecutions *the latter is interpreted to include a public prosecutor only if such a public prosecutor is an officer subordinate to the Director of Public Prosecutions,* and is acting under his general or special instructions. For, it is conceivable that while the Director of Public Prosecutions may have appointed public prosecutors in different ministries, departments or sections throughout the country, all such appointees are not necessarily officers subordinate to him; some are subordinate to some other officials, in which case in our view, they would not be competent to give the requisite notice. In the instant case there was no evidence to show that the RCO who purported to give the requisite notice was subordinate to the Director of Public Prosecutions within the meaning of the section, and on that account the Court below was perfectly justified to hold as it did that there was no notice given by the Director of Public Prosecutions of his intention to appeal.

Before we take leave of the matter, we have to deal with a supplementary issue which arose in the course of our interpretation of section 377 of the Act which is quoted above. This is in connection with the word "section" appearing in the first line of that section. We thought that there was a typographical error and that the word should read "sections" instead. Mr Jundu, however, took the view that the word should be read in its present form. He contended that is what the drafters of it had intended it to be and that if it was a typographical error, the Parliamentary Draftsman would have already corrected it since 1985 when it was enacted. With respect, however,

we disagree. If Mr Jundu's interpretation is adopted, it would mean that the provision is targeting or is directed to only the section immediately after it i.e section 378. Such formulation, however, is grammatically unsound and indeed clumsy. For, if the provision had section 378 only as its target then the use of the words "of this Part unless the context otherwise requires" is both superfluous and meaningless. We increasingly feel that the framers of the section cannot have intended such consequences.

There is yet another ground which is even more important. Reading the word in its present form would mean that the interpretation of Director of Public Prosecutions applies only to section 378 which deals only with conferring on the Director of Public Prosecutions the power of appeal to the High Court. In other words it means that the Director of Public Prosecutions and any officer subordinate to him acting under his instructions in terms of section 377 would be empowered to appeal to the High Court, but that in terms of section 379 of the Act (quoted earlier) the notice of intention to appeal can only be given by the Director of Public Prosecutions himself. We can find no justification for adopting such a restrictive interpretation of "Director of Public Prosecutions" in section 379 of the Act.

We feel justified to say that the word should read "sections" to mean that the interpretation of "Director of Public Prosecutions" applies to the remaining sections of Part X(c) of the Act. We reject Mr Jundu's contention that if it was a typographical error the Parliamentary Draftsman would have already corrected it. For, in practice there are a number of typographical errors which remain uncorrected on the statute books, may be due to pressure of work, and this is one of them.

In the result we are satisfied that the High Court rightly struck out the appeal before it for being incompetent, and the present appeal from that decision is accordingly dismissed.