

**IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM**

(CORAM: NSEKELA,J.A., LUANDA,J.A., And MJASIRI,J.A.)

CRIMINAL APPEAL NO. 345 OF 2009

HSU CHIN & 36 OTHERS APPELLANTS

VERSUS

THE REPUBLIC.....RESPONDENT

**(Appeal from the decision of the High Court of Tanzania
at Dar es Salaam)**

(Mwaikugile, J.)

dated 11th day of September, 2008

in

Criminal appeal No. 78 of 2009

.....

RULING OF THE COURT

NSEKELA J.A.

When the appeal was called on for hearing, the Court raised *suo motu*, two issues in connection with the notice of appeal. The first issue related to the identity of the appellants. The notice of appeal reads in part as follows:-

“TAKE NOTICE that HSU CHIN TAN & 36
OTHERS appeals to the Court of Appeal of
Tanzania.....”

It is not known who were these “36 others.” The second issue was to the effect that the record of appeal did not indicate where the notice of appeal was lodged.

Capt. Bendera, learned Counsel, who represented the appellants readily conceded that indeed the record of appeal did not indicate that the notice of appeal was lodged in the High Court. On the identity of the appellants learned counsel also conceded that only one appellant is mentioned and the others appellants were not mentioned.

Mr. Mganga, learned Senior State Attorney, admitted to the same effect and prayed that the appeal be struck out.

According to the record of appeal before the Court it is clear that it is not indicated where the notice of appeal was lodged. This is in clear contravention of the then Rule 61 (1) of the Court of Appeal Rules (now Rule 68 (1)). A notice of appeal institutes an appeal. A valid notice of appeal is therefore a critical document to the institution of an appeal.

As regard to the identity of the appellants, we refer to the then rule 61 (3) (now rule 68 (3)) of the Court of Appeal Rules.

It reads in part as follows:-

“61 (3) where two or more persons have been jointly tried and any two or more of them desire to appeal to the Court, they may at their

option lodge separate notices or a joint notice of appeal.....”

A question we ask ourselves, is this a joint notice of appeal? With respect, we think not. It is only one appellant HSV CHIN who has been identified by name. The rest are referred to as “OTHERS”, but who are they? How do we know that the “36 others” were desirous of appealing to this Court? With respect, this is not a joint notice of appeal. The names of all appellants should have been mentioned in the notice of appeal.

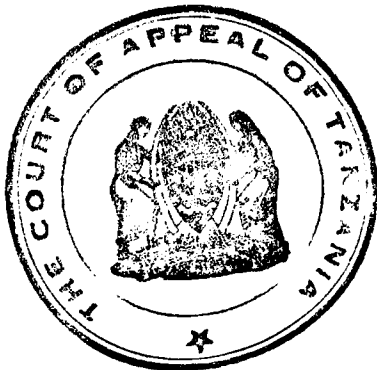
For these reasons, the notice of appeal is incompetent. It is accordingly struck out.

DATED at DAR ES SALAAM this 23rd day of August, 2010.

H.R. NSEKELA
JUSTICE OF APPEAL

S.J. BWANA
JUSTICE OF APPEAL

B.M. RUANDA
JUSTICE OF APPEAL



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


M.A. MALEWO
DEPUTY REGISTRAR