

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

**(CORAM: RUTAKANGWA, J.A., LUANDA, J.A., And JUMA, J.A.)**

**CRIMINAL APPEAL NO. 53 OF 2013**

**MNAZI PHILIMON ..... APPELLANT**

**VERSUS**

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

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

**(Khaday, J.)**

**Dated the 27<sup>th</sup> day of June, 2011  
in**

**Criminal Appeal No. 5 of 2011**

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**RULING OF THE COURT**

**27<sup>th</sup> & 1<sup>st</sup> July, 2013**

**RUTAKANGWA, J.A.:**

Mnazi Philimon was convicted by the District Court of Mpanda District of the offence of Attempted Rape. He was sentenced to a prison term of thirty (30) years. His appeal to the High Court at Sumbawanga, that, is Criminal Appeal No. 5 of 2011, was dismissed by Khaday, J. on 27<sup>th</sup> June, 2011. Aggrieved by the High Court decision, he resolved to appeal to this Court. He accordingly took initial steps to institute the

appeal by lodging, on 5<sup>th</sup> July, 2011, what he took to be a notice of appeal.

Under Rule 68(1) of the Tanzania Court of Appeal Rules, 2009 (the Rules), it is a notice of appeal which institutes a criminal appeal in this Court. To be a valid notice of appeal, the same must comply with the mandatory provisions of Rule 68(2) of the Rules. The sub-rule reads as follows:-

*"(2) Every notice of appeal shall briefly state the nature of the acquittal, conviction, sentence, order or finding against which it is desired to appeal, and shall contain a full and sufficient address at which any notices or other documents connected with the appeal may be served on the appellant or his advocate and, subject to Rule 17, shall be signed by the appellant or his advocate."*

It is further provided in sub-rule 7 of Rule 68 that a notice of appeal "shall be substantially in the Form B in the First Schedule to" the Rules. One of the essential contents of the Form B is the identity of the criminal

matter in the High Court being appealed from, that is, the number of the case in the High Court. In this particular case, for instance, it was Criminal Appeal No. 5 of 2011.

When the matter came up for hearing before us, Mr. Francis Rogers, learned State Attorney for the respondent Republic, rose to argue a point of preliminary objection, notice of which he had earlier on lodged. The point of law, subject of the notice of objection, reads as follows:-

*"The appeal is wrong (sic) for being instituted by an incurably defective notice of appeal."*

Mr. Rogers' oral submission in elaboration of the point of objection, was brief and precise. He pointed out that the appellant in the High Court was aggrieved by the dismissal of his appeal in Criminal Appeal No. 5 of 2011, whereby the High Court upheld his conviction for attempted rape and the prison sentence. To Mr. Rogers, a proper notice of appeal to this Court ought to have shown that Mnazi Philimon is appealing against the High Court decision in Criminal Appeal No. 5 of

2011. Instead, he stressed, the notice of appeal on record, shows that he is appealing against the judgment of Khaday, J. in Criminal Sessions case No. 193 of 2011, whose judgment is not before the Court. He went on to submit that the impugned notice of appeal does not state at all the nature of the conviction and sentence against which Mnazi is desiring to appeal. Instead, he pointed out, it is only shown therein that Mnazi “intends to appeal to the Court of Appeal against the whole decision.” Relying on the decisions of the Court in **John Petro v. R.**, Criminal Appeal No. 130 of 2010, **William Sunday v. R.**, Criminal Appeal No. 75 of 2007 and **Musa Mohamed v. R.**, Criminal Appeal No. 716 of 2005 (all unreported), he pressed us to find and hold that the notice of appeal which purported to institute this appeal is incurably defective and strike out the appeal.

Mnazi Philimon appeared before us in person to prosecute his purported appeal. Being a lay person, he urged us to appreciate the undenied fact that the challenged notice of appeal was drafted by the prison authorities. He was only required to thumbprint it, he said.

There is no gainsaying here that the notice of appeal which purported to institute this appeal is incurably defective on account of the undisputed errors pointed out by Mr. Rogers. The Court has persistently held that where the "subject of the notice of appeal does not exist at all" or is not before the Court, the error renders the notice of appeal incurably defective (see, for instance, **John Petro v. R.**, (supra). In the instant case, Criminal Sessions case No. 193 of 2011 cited in the impugned notice of appeal is not related to the judgment of Khaday, J., in Criminal Appeal No. 5 of 2011 emanating from Criminal case No. 193 of 1998 in the trial District Court which Mnazi is desirous of appealing from. There is, therefore, no notice of appeal against the judgment of Khaday, J., in Criminal Appeal No. 5 of 2011 dated 27<sup>th</sup> June, 2011 in the High Court at Sumbawanga.

Furthermore, the Court has consistently held that "it is a mandatory requirement" of Rule 68(2) of the Rules "for the notice of appeal to state the nature of the conviction, sentence, order, or finding of the High Court against which it was desired to appeal." Failure to do so, according to settled law, renders the purported appeal incompetent:

see, for instance, **Majid Goa Vedastus v. R.**, Criminal Appeal No. 268 of 2006, **William Sunday v. R.** (supra), **Emmanuel Kanengo v.R.**, Criminal Appeal No. 432 of 2007, and **January Makanta v. R.**, Criminal Appeal No. 55 of 2013 (all unreported).

On account of such defects in the notice of appeal as above articulated, the Court in **January Makanta** (supra) lucidly stated that:

*"[A]ppellant did not file any valid Notice of Appeal to ground a competent appeal for our determination. There is no appeal before us, even though the appellant still has the opportunity after complying with law, to come back to this Court in second appeal."*

The purported appeal was struck out, as was the case in the cases referred to above.

We are enjoined by law to act in like manner. We hold, as urged by Mr. Rogers, that the notice of appeal which purported to institute this appeal, which never was, is incurably defective and we strike it out. As the purported appeal has now no legal leg to stand on, we find it to be incompetent and strike it out.

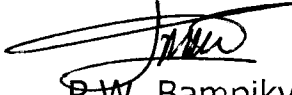
**DATED** at **MBEYA** this 1<sup>st</sup> day of July, 2013.

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

B.M. LUANDA  
**JUSTICE OF APPEAL**

I.H. JUMA  
**JUSTICE OF APPEAL**

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

  
P.W. Bampikya  
**SENIOR DEPUTY REGISTRAR**  
**COURT OF APPEAL**