

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

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

CRIMINAL APPEAL NO. 54 OF 2013

**OSCAR PENDEZA APPELLANT
VERSUS
THE REPUBLIC.....RESPONDENT**

**(Appeal from the Judgement of the Court of Resident
Magistrate at Sumbawanga)**

(Dyansobera, PRM – E.J.)

**dated 24th day of August 2006
in
Criminal Appeal No. 10 of 2011**

RULING OF THE COURT

18th & 20th June 2013

MJASIRI, J.A.:

In the District Court of Mpanda at Mpanda, the appellant Oscar Pendeza was convicted of the offence of armed robbery contrary to section 285 and 286 of the Penal Code Cap 16 RE. 2002. He was sentenced to 30 years imprisonment. Aggrieved by the conviction and sentence he

unsuccessfully appealed to the High Court at Sumbawanga, hence this second appeal.

At the hearing of the appeal, the appellant appeared in person and was unrepresented. The respondent Republic had the services of Mr. Francis Rogers, learned State Attorney.

When the appeal was called on for hearing, Mr. Rogers informed the Court that he intended to raise a legal issue before proceeding with the appeal. He submitted that the notice of appeal was defective rendering the appeal incompetent. He stated that the notice of appeal did not comply with the requirements under Rule 68 (1) and (2) of the Court of Appeal Ruler 2009. He pointed out the following defects:-

- (i) It did not state the nature of conviction, sentence, order or finding against which it desired to appeal.
- (ii) It did not state the correct decision the appellant intended to appeal from. The notice made reference to Criminal Sessions

Case No. 22 of 2006 whereas the record before the Court is in respect of DC Criminal Appeal No. 10. of 2006.

He argued that it is the notice of appeal which institutes the appeal. As the notice filed in Court is defective, the appeal is incompetent and should be struck out. He made reference to **Hilda Andolile @ Panjan v Republic**, Criminal Appeal No. 293 of 2009, CAT (unreported).

The appellant being a layman and without the benefit of a Legal Counsel, did not have much to say. He simply pleaded with the Court to give him time to rectify the defective notice.

We on our part are inclined to agree with the learned State Attorney. The law is settled. In Criminal appeals, it is the notice of appeal which institutes the appeal. Section 68 (1) and (2) of the Court Rules provides as follows:-

- (1) *Any person who desires to appeal to the Court shall give notice in writing, which shall be lodged in triplicate with the Registrar of the High Court at the place where the decision against which it is desired to appeal was given, within thirty days of the date of that decision, and **the notice of appeal shall institute the appeal.***
- (2) *Every notice of appeal shall state briefly **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.*
- [Emphasis ours.]*

We have carefully reviewed the notice of appeal filed by the appellant and we are of the considered view that the notice falls short of the requirements under Rule 68 (2). Since the notice of appeal is not a valid one, it cannot institute the appeal. As it is the notice of appeal which institute the appeal in criminal appeals, the appeal before us is incompetent. The First Schedule to the Court Rules, provides a format to

be followed when a notice of appeal is prepared. According to Rule 68 (7) of the Court Rules, a notice of appeal shall be substantially in the format of Form B in the First Schedule to the Court Rules. It is therefore prudent to prepare a notice of appeal in a manner set out in Form B. We hereby take the liberty to reproduce Form B for ease of reference.

FORM B (Rule 68)

In the Court of Appeal of Tanzania at Criminal/Civil 1(10) Application No of20
 In the matter of an intended appeal/Criminal/Civil. Appeal No of 20
 between Appellant
 and Respondent
 (Appeal from the of the High Court of
 at (Mr. Justice)
 Dated 20 in
 Criminal/Civil or Application/Appeal No. Of 20)

NOTICE OF APPEAL

TAKE NOTICE that appeals to the Court of Appeal of Tanzania against the decision of the Honourable Mr. justice given at on the day of 20
 Whereby the appellant was convicted of and sentenced to
 The appeal is against conviction only/conviction and sentence sentence only.
 The appellant intends/does not intend to be present at the hearing of the appeal. The address of service of the appellant is

 Dated this Day of, 20
 Signed Appellant/Advocate for the Appellant
 (Retained only to prepare this notice/
 Retained to appear at the hearing of the
 appeal/Assigned to appear at the hearing

of the appeal.

To: The Registrar of the High Court at Lodged in
the High Court of Tanzania at on the
day of 20.....
..... Registrar

In **Kassim Said and Two others v Republic**, Criminal Appeal No.
69 of 2010 CAT (unreported) the Court, in making reference to Rules 68(1)
and (2) of the Court Rules stated thus:

*" The above Rule is couched in mandatory terms.
The Rule must be complied with ... Failure to do so
will render the notice of appeal defective and hence
the appeal lodged thereof will be declared
incompetent. In that respect a notice of appeal is a
vital document for the lodgement of appeal."*

See also **Tatizo Msongole v Republic**, Criminal Appeal No. 140 of
2010; **Gabriel Mwakanemela v Republic**, Criminal Appeal No. 204 of
2009 CAT (both unreported).

We subscribe to the decisions of the Court in **Saidi, Msongole** and
Mwakanemela cases. The notice of appeal is indeed defective it is not

properly before the Court and could not have instituted the appeal under Rule 68 (1) of the Court Rules.

For the foregoing reasons, we are of the considered view that the notice of appeal is defective. In view of the absence of a valid notice of appeal, we hereby strike out the appeal for being incompetent.

It is so ordered.

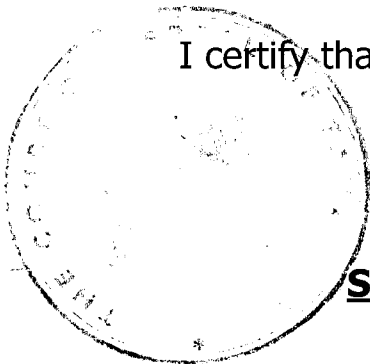
DATED at MBEYA, this 18th day of JUNE, 2013


B.M. LUANDA
JUSTICE OF APPEAL

S. MJASIRI
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