

IN THE COURT OF APPEAL OF TANZANIA

AT MBEYA

(CORAM: KILEO, J.A., MJASIRI, J.A. And MASSATI, J.A.)

CRIMINAL APPEAL NO. 402 OF 2013

LUKELO UHAHULA.....APPELLANT

VERSUS

THE REPUBLIC.....RESPONDENT

(Appeal from the decision of the High Court of Tanzania at Mbeya)

(Lyamuya, Esq. SRM with Ext. jur.)

Dated the 1st day of June, 2013

In

(DC) Criminal Appeal No. 8 of 2013

RULING OF THE COURT

22nd & 23rd October, 2014

KILEO, J.A.:

When the appeal was called on for hearing, Mr. Stambuli Ahmed, learned State Attorney representing the respondent Republic, raised a preliminary point of objection, notice of which had previously been filed in Court to the effect that the appeal before the Court is incompetent for having a defective Notice of Appeal. The learned State Attorney referred to the Notice of Appeal appearing at page 69 of the record which shows that the appellant is appealing against the decision of Lyamuya, SRM with Extended

Jurisdiction in Criminal Case No. 180 of 2011 while Lyamuya, SRM with Extended Jurisdiction did not hear that case.

Mr. Ahmed submitted further that the Notice of Appeal ought to have complied with Rule 68 (2) of the Court of Appeal Rules which provides:

"68. (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"

Mr. Ahmed also submitted that since in terms of Rule 68(1) of the Court Rules it is the Notice of Appeal which institutes an appeal, it follows that where a Notice of Appeal is defective there can be no competent appeal that can be entertained by the Court. He therefore asked us to strike out the incompetent appeal, having referred to decisions of this Court including **Msafiri Hassan Masimba v. R.** (Criminal Appeal No. 375 of 2013 – unreported).

The appellant on the other hand resisted the Preliminary Objection lamenting that he is in prison and all his papers are processed by prison authorities. He also said that other cases have been dealt with by this Court having the same problem.

We, on our part agree with observations made by the learned State Attorney that the Notice of Appeal in the record is defective in that the decision cited in the Notice against which it is intended to appeal is non-existent. In terms of Rule 68(1) of the Court Rules, 2009 it is the Notice of Appeal which institutes an appeal in criminal matters. Where a Notice of Appeal is defective it means that there is no appeal which can be entertained by the Court. This Court has stated, in a number of cases that if a defective is notice filed there is no appeal. See for instance **Elia Masena Kachala & Others v Republic**; Criminal Appeal No. 156 of 2012, **Director of Public Prosecutions versus ACP Abdallah Zombe and 8 Others**, Criminal Appeal No. 254 of 2009 and **Msafiri Hassan Masimba v Republic**, Criminal Appeal No. 375 of 2013 (all unreported). Much as we sympathise with the appellant in the situation he has been placed, in so far as the appeal before us is concerned our hands are tied as there is, as a matter of fact, no appeal before us that we can entertain. Though the appellant said that there

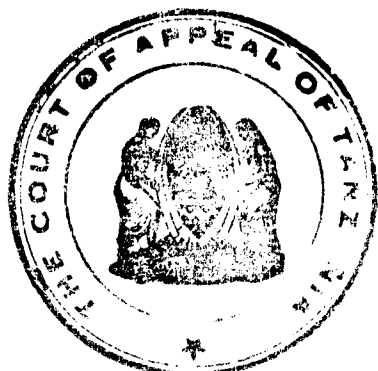
have been other causes with a similar situation (including Criminal Appeal No. 41 of 2013) that this Court heard, unfortunately the record he showed us did not contain a judgment of the Court, nor its proceedings to satisfy ourselves of the correctness of his submission. All the same, as already pointed out there is no death of authorities of this Court on the question of defective notices visavis competence of a criminal appeal.

In the circumstances we find the appeal before us to be incompetent and for this reason we strike it out.

The appellant can still access the Court in pursuit of his rights subject to the law of limitation.

It is ordered accordingly.

DATED at **MBEYA** this 22nd day of October, 2014.



E. A. KILEO
JUSTICE OF APPEAL

S. MJASIRI
JUSTICE OF APPEAL

S. A. MASSATI
JUSTICE OF APPEAL

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


P. W. BAMPIKYA
SENIOR DEPUTY REGISTRAR
COURT OF APPEAL