

IN THE COURT OF APPEAL OF TANZANIA

AT MBEYA

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

CRIMINAL APPEAL NO. 375 OF 2013

MSAFIRI HASSAN MASIMBA.....APPELLANT

VERSUS

THE REPUBLIC.....RESPONDENT

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

(Lyamuya Esq. SRM. Ext. Jur.)

dated the 2th day of October, 2013

in

Criminal Appeal No. 12 of 2013

RULING OF THE COURT

17th October, 2014

MJASIRI, J.A.:

When the appeal was called on for hearing, Mr. Basilius Namkambe, learned State Attorney rose to raise an objection that the appeal before the Court is incompetent for having a defective notice of appeal. According to the notice of appeal on page 84 of the record, the appellant is appealing against the decision of A.M. Lyamuya Ext Jurisdiction SRM dated September 27, 2013 in Criminal Case No. 119 of 195 which is non-existent. According to him the decision of A.M. Lyamuya, is in respect of Criminal Appeal No 12 of 2013 dated October 2, 2013.

The appellant on his part, who appeared in person and was unrepresented while conceding to the anomaly, lamented that he is not conversant with the law, and being incarcerated in prison, he relies solely on the prison authorities to process his paperwork. He is of the view that hearing of his appeal is being unjustly delayed when he has been in prison for nineteen (19) years.

We on our part agree with the observations made by the learned State Attorney that the notice of appeal is defective. The law is settled that it is the notice of appeal which institutes the appeal. Rule 68(1) of the Tanzania Court of Appeal Rules 2009 (the Court Rules) provides as under:-

"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 the decision, and the notice of appeal shall institute the appeal."

This Court through its various decisions has clearly stated that if a defective notice is lodged there is no competent appeal which is capable of being entertained by the Court. See for instance **Elia Masena Kachala & others v Republic**, Criminal Appeal No. 156 of 2012 and the **Director of Public Prosecutions versus ACP Abdallah Zombe and 8 Others**, Criminal Appeal No 254 of 2009. The Court has held in various occasions that the issue of jurisdiction is so fundamental. See **Tanzania**

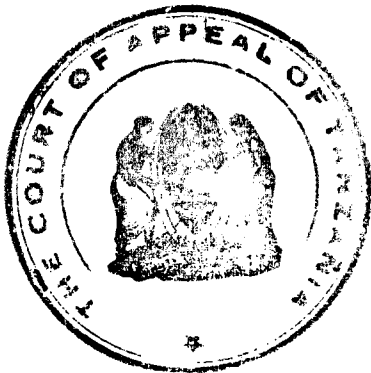
Revenue Authority v Kotra Co. Ltd, Civil Appeal No. 12 of 2009 CAT
(unreported).

Therefore as long as the notice of appeal on record is defective and is purporting to institute an appeal against a judgment which is non-existent, there is no competent appeal before the Court.

For the foregoing reasons we find that the appeal is incompetent and is hereby struck out. The appellant can still pursue the matter in Court subject to the law of limitation.

We observe in passing that the appellant's grievance is a valid one and there is need for appellants who are facing mandatory minimum sentences, to have access to some kind of legal assistance when pursuing their appeals before the highest and final Court of this Land.

DATED at **MBEYA** this 17th 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.

A handwritten signature in black ink, appearing to read "P.W. Bampihya".

P.W. BAMPIKYA
SENIOR DEPUTY REGISTRAR
COURT OF APPEAL