

**IN THE COURT OF APPEAL OF TANZANIA**

**AT MBEYA**

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

**CRIMINAL APPEAL NO. 404 OF 2013**

**1. MUSSA IDD  
2. HERODE LUCAS } .....APPELLANTS**

**VERSUS**

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

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

**(Lyamuya Esq. SRM. Ext. Jur.)**

**dated the 24<sup>th</sup> day of September, 2013**

**in**

**Criminal Appeal No. 17 of 2013**

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**RULING OF THE COURT**

**22<sup>nd</sup> October, 2014**

**MJASIRI, J.A.:**

When the appeal was called on for hearing. Mr. Edwin Kakolaki, learned Principal State Attorney, rose to seek permission (which was granted) to raise a preliminary point of law that the Notice of Appeal is defective rendering the appeal incompetent. He submitted that the Notice of Appeal is making reference to a judgment which is non-existent. This is contrary to the requirements under Rule 68(2) of the Court of Appeal

Rules 2009 (the Court Rules). As it is the Notice of Appeal which institutes the appeal, the appeal is incompetent.

Both appellants bitterly complained about this state of affairs. Their major complaint being that as convicts who have been incarcerated, they do not have anything to do with the preparation of the Notice of Appeal. All the paper work is being handled by the prison authorities. They also complained of other existing and pending cases and charges of murder against them.

We on our part taking into consideration the Notices of Appeal on pages 94 and 95 of the record are inclined to agree with Mr. Kakolaki that the Notices of Appeal are defective and do not comply with the requirements of Rule 68(2) of the Court Rules which requires that the Notice of Appeal to state briefly the nature of the acquittal, conviction, sentence, order or finding against which it is desired to appeal. It is evident from the record that the notice of appeal filed by both appellants make reference to a non-existent matter.

It is clearly indicated in Rule 68(1) of the Court Rules "that the Notice of Appeal shall institute the appeal". If the notice of appeal is defective it means there is no competent appeal before the Court.

It is settled law that once the Notice of Appeal is defective, the appeal is incompetent and has no leg to stand on. This legal position has been echoed in various decisions of this Court. See for instance, the **Director of Public Prosecutions V ACP**

**Abbdallah Zombe and Eight Others**, Criminal Appeal No 254 of 2009; **Elia Masena Kachala and Two Others v Republic**, Criminal Appeal No 151 of 2012 and **Lukelo, Uhaula v Republic**, Criminal Appeal No. 402 of 2013 CAT. (All unreported).

In **Elia Masena Kachala** (supra) it was stated thus:-

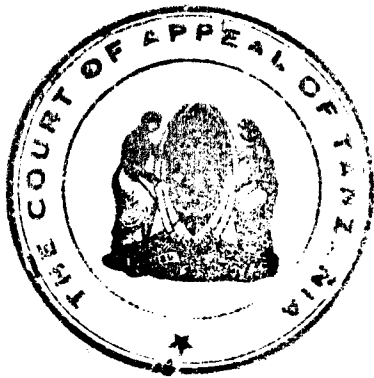
*"For a notice of appeal to this Court to be valid, it is mandatory that it must indicate not only the date of the challenged judgment and the name of the trial appellate Judge/Magistrate, but also the trial/appellate court and the correct registration number of the case/ appeal."*

In the result and in view of the foregoing reasons we are compelled to strike out the appeal. Order accordingly.

This is yet another appeal where the Notice of Appeal is defective, the consequence of which the appeal could not be heard as scheduled. The appellants' outcry is justifiable as this is not their fault, being laymen and having no legal representation. The need for access to legal assistance and guidance in our prisons in the preparation of appeals before the final Court of this Land is paramount, especially in cases where appellants are facing very long mandatory sentences.

The appellants can still pursue the matter in the High Court by seeking extension of time to file Notice of Appeal.

**DATED** at **MBEYA** this 22<sup>nd</sup> 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**