

IN THE COURT OF APPEAL OF TANZANIA

AT TABORA

(CORAM: MBAROUK, J.A., MASSATI, J.A., And MUSSA, J.A.)

CRIMINAL APPEAL NO. 190 "B" OF 2012

**1. HAMISI S/O YAZIDI }
2. SELEMANI S/O ISAYA } APPELLANTS**

VERSUS

THE REPUBLIC..... RESPONDENT

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

(Wambali, J.)

dated the 28th day of September, 2012

in

Criminal Appeal No. 117 of 2010

RULING OF THE COURT

13th & 16th June, 2014

MBAROUK, J.A.:

When the appeal was called on for hearing, the Court wanted to satisfy itself as to whether the contents of the notices of appeal in this appeal have complied with the requirements of the law.

The record of appeal shows that after the appellants were aggrieved with judgment of the High Court, they lodged their notices of appeal. The same record shows that the judgment of the

High Court (Wambali, J.) in Criminal Appeal No. 117 of 2010 at Kigoma was delivered on 28-9-2012.

According to Rule 68(2) of the Court of Appeal Rules, 2009 (the Rules) states as follows:-

"(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."

However, in the instant appeal, both notices of appeal have shown variance of the number of a case of the High Court and date of the judgment intended to be appealed against. As for the notice

of appeal of the 1st Appellant, Hamisi s/o Yazidi, the title shows that he intends to appeal against High Court Criminal Appeal No. 117 of 2012, which is not the case, because the actual member of the case before the High Court was Criminal Appeal No. 117 of 2010.

The same variance appeared in the notice of appeal lodged by the 2nd Appellant, Selemani s/o Isaya. In his notice of appeal, the title shows that he intends to appeal against the High Court Criminal Appeal No. 112 of 2012, which is not the case as the actual number of the High Court case is Criminal Appeal No. 117 of 2010.

In addition to that, both notices of appeal lodged in the record of appeal have shown that the judgment of High Court (Wambali, J.) is dated 21-9-2012 while the actual date is 28-9-2012.

We are of the opinion that such variance of the actual number of the case and the date of judgment intended to be appealed against renders the notices of appeal incompetent. In addition to

that, Rule 68(1) of the Rules mandatorily states that it is the notice of appeal which shall institute the appeal, hence if the notice of appeal is incompetent, it deserves to be struck out.

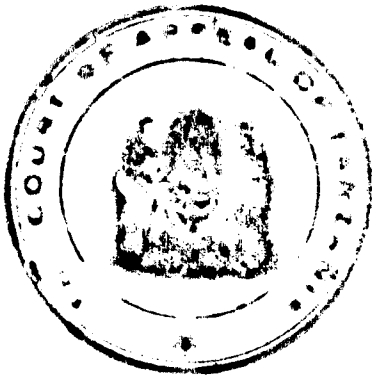
On his part, Mr. Jackson Bulashi, learned Principal State Attorney for the respondent/Republic joined hands with us that such variance of the actual number of the case and date of judgment which it is intended to be appealed against renders the notices of appeal incompetent. He added that as Rule 68(1) and (2) of the Rules were not complied with, the notices of appeal becomes incompetent. For being incompetent, he urged us to invoke Rule 4(2) (a) of the Rules and strike out the appeal.

On their part, the appellants had nothing to comment understandably so being lay persons because the matter raised by the Court *suo motu* was technical in nature.

Having established that the notices of appeal in this appeal are incompetent, we remain with no other opinion but to invoke

Rule 4(2) (a) of the Rules and strike out the appeal. Hence, the appeal is hereby struck out. It is so ordered.

DATED at TABORA this 13th day of June, 2014.




M.S. MBAROUK
JUSTICE OF APPEAL

S.A. MASSATI
JUSTICE OF APPEAL

K.M. MUSSA
JUSTICE OF APPEAL

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


E.Y. MKWIZU
DEPUTY REGISTRAR
COURT OF APPEAL