

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

(CORAM: MBAROUK, J.A., MMILLA, J.A., And MWARIJA, J.A)

CRIMINAL APPEAL NO. 246 OF 2013

CHRISTIAN S/O SANGA APPELLANT

VERSUS

THE REPUBLIC RESPONDENT

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

(Manento, J.)

dated the 30th day of April, 2003)

in

Criminal Appeal No. 45 of 2000

.....

RULING OF THE COURT

13th & 17th August, 2015

MBAROUK, J.A.:

At the time when the appeal was called on for hearing, it transpired that there was a notice of preliminary objection filed earlier on 11th August, 2015 by Mr. Renatus Mkude, learned Senior State Attorney who represented the respondent /Republic. The said notice was made under Rule 4 (2)(c) of the Court of Appeal Rules, 2009 and contained the following points of law:-

- 1. That, the notice of appeal has wrongly cited the number of the first appellate court.*

2. That, the notice of appeal contain two different dates which raises confusion.

3. That, the nature of sentence of the first appellate court is not adequately stated.

In his address to those points of law, the learned Senior State Attorney submitted that, according to Rule 68 (1) of the Court of Appeal Rules, 2009 (the Rules), it is the notice of appeal which shall institute the appeal. But as pointed out in the three points stated above, he said the notice of appeal on record contains defects. For example, **firstly**, he said, the notice of appeal shows that the number of the appeal intended to be appealed against is Criminal Appeal No. 320 of 1999, whereas the actual number is the High Court Criminal Appeal No. 45 of 2000. He contended that, failure to insert a correct number of the case intended to be appealed against is a fatal defect according to the requirement stated under Rule 68.

Secondly, the learned Senior State Attorney submitted that, there are two confusing dates of the judgment intended to be appealed against appearing in the same notice of appeal.

He said, at the title of the said notice of appeal, the date of the first appellate court's judgment shows to be 30-4-2003 whereas in the contents of the notice of appeal it has been indicated that the date of such judgment is 30-4-2002. He urged us to find that, such a defect is fatal as it is not clear which among the two dates is the correct one.

Thirdly, he said the sentence which appears in the notice of appeal is not complete as the High Court imposed on the appellant a lesser sentence of thirty (30) years imprisonment with twelve (12) strokes of the cane instead of thirty five (35) years imposed by the trial court. But in the notice of appeal the appellant has shown that the sentence imposed on him was thirty (30) years only. Hence, he said, the appellant should have shown in his notice of appeal complete sentence imposed upon him.

For those reasons, the learned Senior State Attorney urged us to find the notice of appeal defective. For being defective, that renders the appeal incompetent, hence prayed for the appeal to be struck out.

On his part, the appellant had nothing useful to submit, he simply left the Court to use its wisdom and reach to a just decision.

There is a long list of the decisions of this Court which emphasize the requirement of complying with Rule 68 of the Rules. For exam-ple, **Nichontize s/o Rojeli v. Republic**, Criminal Appeal No. 177 of 2014, **Mwanya Ally Dadi @ Hamisi Mussa Mtondoima v. Republic**, Criminal Appeal No. 105 of 2013, **John Petro v. Republic**, Criminal Appeal No. 130 of 2010, **Majid Goa Vedastus v. Republic**, Criminal Appeal No. 268 of 2006 (All unreported). In the case of **Nichontinze s/o Rojeli** (supra) this Court has emphasized the compliance of the requirements stated in Rule 68 of the Rules and stated as follows:-

“The notice of appeal must contain the following:-

- 1) *Indicate a correct date of the judgment intended to be appealed against,*

2) Insert the name of the High Court Judge and number of the case to be appealed against.

3) State briefly the nature of the acquittal, conviction, sentence, order or finding against which it is desired to appeal.

It is now settled that non – compliance with those mandatory requirements under Rule 68 of the Rules render a notice of appeal defective leading the appeal to be incompetent.

In this appeal, the notice of appeal has wrongly cited the number of the case sought to be appealed against and its outcome is to find the notice of appeal defective and the appeal incompetent. (See. **Nichontinze s/o Rojeli** (supra). In addition to that, the notice of appeal contained confusing dates of the judgment sought to be appealed against. This means that the notice of appeal has failed to indicate a correct date of the judgment sought to be appealed against. The end result of such a defect is to find the notice of appeal defective and the

appeal incompetent. See, **Nichontinze s/o Rojeli** (supra). We are increasingly of the view that the above pointed out defects are fatal enough to dispose of the matter, and there is no need to examine the third point raised in the preliminary objection.

Having established that the pointed out defects in the notice of appeal are fatal, we are of the opinion that, that renders the appeal incompetent and constrains us to strike it out. In the event, the appeal is hereby struck out. It is so ordered.

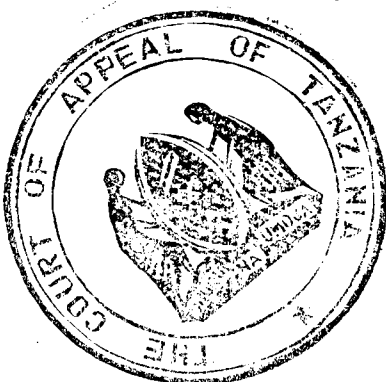
DATED at IRINGA this 14th day of August, 2015.


M.S. MBAROUK
JUSTICE OF APPEAL

B.M.K. MMILLA
JUSTICE OF APPEAL

A.G. MWARIJA
JUSTICE OF APPEAL

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




E.F. FUSSI
DEPUTY REGISTRAR
COURT OF APPEAL