

IN THE COURT OF APPEAL OF TANZANIA
AT IRINGA
(CORAM: MBAROUK, J.A., MMILLA, J.A., And MWARIJA, J.A.)

CRIMINAL APPEAL NO. 337 OF 2013

DAMASI WELLA APPELLANT

VERSUS

THE REPUBLIC RESPONDENT

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

(Fikirini, J.)

dated the 28th day of August, 2013

in

Misc. Criminal Application No. 32 of 2013

RULING OF THE COURT

14th & 18th August, 2015

MMILLA, J. A.:

The substance of this ruling is to resolve the competence or otherwise of Criminal Appeal No. 337 of 2013 before this Court. The appellant herein, Damas s/o Wella, is appealing against the ruling of the High Court of Tanzania at Songea (Hon. P. S. Fikirini, J.) in Criminal Application No. 32 of 2012 dated 28.8.2013. In the application, the applicant sought that court's indulgence to extend time in which to enable him to appeal against the decision of the District Court of Songea in Criminal Case No. 344 of 1999.

The appeal was slated for hearing on 14.8.2015. The appellant appeared in person and fended himself, while Mr. Renatus Mkude, learned Senior State Attorney, represented the respondent Republic. He raised a preliminary objection premised on the ground that the notice of appeal offends the provisions of Rule 68 (2) of the Court of Appeal Rules, 2009 (the Rules).

Submitting in support of the preliminary objection, Mr. Mkude argued that the appellant's notice of appeal wrongly indicated that he was appealing against conviction and sentence whereas the decision dated 28.8.2013 was a ruling that resulted from an application for extension of time in which to appeal. That way he submitted, the notice of appeal did not capture the nature of the order or decision he was appealing against, hence that it offends the provisions of Rule 68 (2) of the Rules. He has contended therefore, that the fatally defective notice of appeal has rendered the application incompetent liable to be struck out.

Admittedly, this is a technical and/or a legal point. It came as no surprise to us to hear the applicant's declaration that he had nothing to say but was resting the matter in the equitable hands of the Court.

We have aptly gone through the notice of appeal under focus. It is apparent that the decision which is the subject of appeal was for extension of time in which to appeal, therefore that what is reflected in that notice of appeal is misconceived. We think it is instructive to reproduce the relevant part of that notice of appeal which runs as follows:-

"(Appeal from the decision of the High Court of Tanzania at Songea Mr. Justice P.S. Fikirini (sic) Criminal Application No. 32 of 2012).

NOTICE OF APPEAL

*Take NOTICE that 560/2012 DAMAS WELLA appeals to the Court of Appeal against the decision of the Honourable Mr. Judge/Justice (sic) P. S. FIKIRINI given at SONGEA on the 28TH day of AUGUST, 2013 **whereby the appellant was convicted of RAPE C/S 130 & 131 (1) 13) (sic) OF THE P/C and sentenced to LIFE.***

The appeal is against conviction only/ conviction and sentence only.. ."[Emphasis provided].

Prima facie, the contents reproduced above do not answer to the nature of the decision in Criminal Application No. 32 of 2013 which is sought to

be impugned. This is the reason why we agree with Mr. Mkude that it offends Rule 68 (2) of the Rules.

Under Rule 68 (2) of the Rules, **it is mandatory for the appellant's notice of appeal to state the nature of conviction, sentence, or finding against which he desires to appeal.** The Court had the occasion of emphasizing this point in the case of **John Petro v Republic**, Criminal Appeal No. 130 of 2010 (unreported). It articulated that:-

" It is now settled law that under the said Rule 61(2) it was a mandatory requirement for the notice of appeal to state the nature of the conviction, sentence, order, or finding of the High Court against which it is desired to appeal. Failure to do so rendered, and still renders under the 2009 Court Rules, the purported appeal incompetent."

See also the cases of, **Emmanuel Andrew Kanengo v. Republic**, Criminal Appeal No. 432 of 2007 and **Hilda Andolile @ Panjani v. Republic**, Criminal Appeal No. 203 of 2009 (both unreported).

In conclusion, since in terms of Rule 68 (1) of the Rules the notice of appeal institutes the appeal, it follows that because the said notice of appeal is fatally defective, the appeal is rendered incompetent. Consequently, we are constrained to, and we hereby strike it out.

DATED at **IRINGA** this 17th day of August, 2015.

M. S. MBAROUK
JUSTICE OF APPEAL

B. K. MMILLA
JUSTICE OF APPEAL

A. G. MWARIJA
JUSTICE OF APPEAL

certify that this is a true copy of the original.




E.F. FUSSI
DEPUTY REGISTRAR
COURT OF APPEAL