IN THE COURT OF APPEAL OF TANZANIA

AT IRINGA

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

CRIMINAL APPEAL NO. 196 OF 2014

JOHN IKLAND @ AYOUB.....APPELLANT

VERSUS

THE REPUBLIC .....RESPONDENT

(Appeal from the decision of Resident Magistrate's Court of Ruvuma

At Songea)

(Hon. Dyansobera, PRM (Ext. Juris)

in

RM.DC. Criminal Appeal No. 38 OF 2013

H/C Criminal Appeal No. 52 of 2013

RULING OF THE COURT

12th & 17th August, 2015.

MMILLA, J. A.:

The appellant, John s/o Ikland @ Ayoub was charged in the District Court of Tunduru in Ruvuma Region with two economic offences; unlawful possession of Government Trophy contrary to section 86 (1) and (2) (c) (ii) of the Wildlife Conservation Act, No. 5 of 2009 read together with Paragraph 14 (d) of the First Schedule to and sections 57 (1) and 60 (2) of the Economic and Organized Crime Control Act, Cap. 200 of the Revised Edition, 2002, and unlawful possession of

ammunitions contrary to sections 4 (1) and 34 (1) and (2) of the Arms and Ammunitions Act Cap. 223 of the Revised Edition, 2002.

The background facts of the case were fully and clearly set out by the first appellate court, but we feel that it is indispensable to recapitulate them, albeit very briefly, especially in so far as they are relevant to the matters which are the subject of this ruling.

When charges were read over and explained to the appellant, he pleaded not guilty. Soon thereafter, the Republic informed the trial court that they were ready for preliminary hearing as envisaged under section 192 of the Criminal Procedure Act Cap. 20 of the Revised Edition, 2002. The trial court magistrate granted the prayer after which the facts were read over. At the end, that court read over and explained the facts to the appellant who admitted that the facts were true and correct. Upon that development, the trial court entered pleas of guilty in respect of both counts, convicted him and subsequently sentenced him to 30 years imprisonment term in respect of the first count, and a further term of 10 years imprisonment in respect of the second count. The sentences were ordered to run concurrently.

On 26th July, 2012, the appellant instituted Criminal Appeal No. 52 of 2013 in the High Court at Songea. He raised three major complaints that his pleas were equivocal; that the trial court magistrate proceed with trial of that case in the absence of the certificate of the Director of Public Prosecutions (the DPP); and lastly that the sentence of 30 years imprisonment in respect of the first count was excessive.

On 11th October, 2013, the Judge in-charge of the High Court at Songea transferred that appeal to the Court of Resident Magistrate at Songea for hearing before W. P. Dyansobera, then a Principal Resident Magistrate with Extended Jurisdiction. He heard and dismissed that appeal, hence this second appeal to this Court.

Before us the appellant appeared in person and unrepresented. His memorandum of appeal repeated almost the same grounds which were raised in the first appellate court. On the other hand Mr. Renatus Mkude, learned Senior State Attorney represented the respondent Republic. At the commencement of hearing, aware that he desired to raise a preliminary objection for which he had not filed a notice, he successfully sought leave to do so. The preliminary objection consisted of four

grounds all referring to the defects found in the notice of appeal. They are as follows:-

(1) That the notice of appeal is defective for wrongly citing the section under which his conviction in respect of the first count was based.

(2) That, also the notice of appeal is defective for omission to indicate the statute from which the other cited provisions, that is paragraph 14 (d) of the first Schedule to and sections 57 (1) and 60 (2) stemmed from.

(3) That the notice of appeal is defective for indicating that he was appealing against the decision of the High Court whereas the case was transferred to the court of Resident Magistrate to be tried by a Principal Resident Magistrate with Extended Jurisdiction.

(4) That, the notice of appeal is defective for having referred Hon. W. P. Dyansobera as a justice whereas he was a Principal Resident Magistrate with Extended Jurisdiction.

Mr. Mkude's submission in support of these grounds was brief but well focused. In the first place, he challenged that the appellant wrongly

indicated that his conviction in respect of the first count was founded on section 86 (c) and (2) (c) (ii) of the Wildlife Conservation Act No. 5 of 2009 because there is no such section as 86 (c) under that Act. Secondly, Mr. Mkude submitted that it was improper for the appellant to have not indicated the relevant statute under which the provisions of paragraph 14 (d) of the First Schedule and sections 57 (1) and 60 (2) were cited from. Similarly, Mr. Mkude argued that since the decision being appealed against stemmed from the decision in the Court of Resident Magistrate which was tried by the Principal Resident Magistrate with Extended Jurisdiction, it was improper to have indicated in the notice of appeal that the appeal was against the decision of the High Court. Further, he submitted that the notice of appeal wrongly referred Hon. W. P. Dyansobera as a justice whereas he was a Principal Resident Magistrate with Extended Jurisdiction. These defects in the notice of appeal, he said, were serious, thus rendering the appeal incompetent, and that since the notice of appeal institutes the appeal in terms of Rule 68 (1) of the Court of Appeal Rules, 2009 (the Rules), he urged us to strike it out. He supported his arguments with the cases of **Mwanya Ally Dadi @ Hamisi Mussa Mtondoima v. Republic**, Criminal Appeal

No. 105 of 2013, CAT and **The Director of Public Prosecutions v. ACP Abdalla Zombe and 8 others,** Criminal Appeal No. 254 of 2009, CAT (both unreported).

The appellant, a self confessed layman, had nothing useful to say. He rested the fate of this matter in the hands of the Court.

We have pertinently considered the submission of Mr. Mkude. It is vivid, and we agree with him that the notice of appeal is loaded with the defects he has pinpointed. We will shortly explain why.

We consider it appropriate to begin our discussion by restating the dictates of Rule 68 (2) of the Rules**.** That Rule instructs **every notice of appeal to briefly state the nature of acquittal, conviction, sentence, order or finding against which it is intended to appeal**. Where these aspects or any one of them may not have been indicated, the notice of appeal will be declared fatally defective. The Court has had occasion to stress this in a number of cases, including those of **Lazaro Msote Sangulu and Others v. Republic**, Criminal Appeal No. 134 of 200, CAT (unreported) and **Mwanya Ally Dadi @ Hamisi Mussa Mtondoima v. Republic** (supra).

In our present matter, we agree with Mr. Mkude that the notice of appeal wrongly indicated that appellant's conviction in respect of the first count was founded under **section 86 (c) and (2) (c) (ii)** of the Wildlife Conservation Act No. 5 of 2009 because there is no such section as 86 (c) under that Act. The proper provision in that regard was **section 86 (1) and (2) (c) (ii)** of the Wildlife Conservation Act, No. 5 of 2009 as reflected in the charge sheet. Thus, Mr. Mkude cannot be faulted on this.

Again, Mr. Mkude is on the right truck in querying the omission to indicate under which statute paragraph 14 (d) of the First Schedule and sections 57 (1) and 60 (2) were cited from. According to the charge sheet, those provisions were cited from the Economic and Organized Crime Control Act, and that the notice of appeal ought to have indicated as such. Since that was not done, we find and hold that this too was a fatal defect.

The above two scenarios, that is wrong citation of the section under which conviction was based and omission to indicate under which statute paragraph 14 (d) of the First Schedule and sections 57 (1) and 60 (2) were cited from, suggest that the notice of appeal did not

properly state the nature of conviction and sentence, thus that they constituted a serious defect.

Further, it is a fact that since Criminal Appeal No. 52 of 2013 was transferred to the court of Resident Magistrate to be tried by a Principal Resident Magistrate with Extended Jurisdiction, and indeed that it was tried by W. P. Dyansobera who then had that status, it was wrong for the notice of appeal to have indicated that it was an appeal against the decision of the High Court instead of indicating that it was an appeal from the court of Resident Magistrate, Extended Jurisdiction. This in our view, infers that the notice of appeal did not properly state the origin of the order or finding which it is desired to appeal against. Once again, we agree with Mr. Mkude that it was similarly a fatal defect.

On the other hand however, although we hold that it was improper for the notice of appeal to have indicated that Mr. W. P. Dyansobera was a justice because then he was a Principal Resident Magistrate with Extended Jurisdiction, we rush to point out that this is a minor defect which in the strict sense, does not offend the provisions of Rule 68 (2) of the Rules and may be ignored as we accordingly do.

Considering the findings we have made above that the notice of appeal was defective for having wrongly indicated that appellant's conviction in respect of the first count was founded under section **86 (c) and (2) (c) (ii)** of the Wildlife Conservation Act No. 5 of 2009; also that it improperly omitted to indicate a statute from which paragraph 14 (d) of the First Schedule and sections 57 (1) and 60 (2) were cited; further that it mistakenly indicated that it was an appeal against the decision of the High Court instead of indicating that it was an appeal from the court of Resident Magistrate, Extended Jurisdiction; we are constrained to hold that the notice of appeal is fatally defective. Since the notice of appeal institutes an appeal in terms of Rule 68 (1) of the Rules, we are forced to find and hold that the appeal is incompetent - See the cases of **Mwanya Ally Dadi @ Hamisi Mussa Mtondoima v. Republic** (supra), **Daudi Mwampamba v. Republic,** Criminal Appeal No. 204 of 2009, CAT and **Majid Goa Vedastus v. Republic**, Criminal Appeal No. 268 of 2006, CAT (both unreported).

Before we may conclude, we desire to re- emphasize what we said in **The Director of Public Prosecutions v. ACP Abdalla Zombe and 8 others** (supra) that:-

"... this Court always first makes a definite finding on whether or not the matter before it for determination is competently before it. This is simply because this Court and all courts have no jurisdiction, be it statutory or inherent, to entertain and determine any incompetent proceedings."

For reasons we have herein above assigned, it is obligatory for us to, and we hereby strike out this appeal for being incompetent. We feel it is requisite however, to advise the appellant that if he wishes to further pursue his right to appeal, he is at liberty, subject to the law of limitation, to re-initiate the process.

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

M. S. MBAROUK
JUSTICE OF APPEAL

B. 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