

IN THE COURT OF APPEAL OF TANZANIA

AT MWANZA

CRIMINAL APPEAL NO. 205 OF 2014

(CORAM: RUTAKANGWA, J.A., MJASIRI, J.A., And KAIJAGE, J.A.)

JAMES PIUS MWITA MAGESA WEREMA @ MWITA MAGESA APPELLANT

VERSUS

THE REPUBLIC RESPONDENT

**(Appeal from the Decision/Judgment of the High Court of Tanzania
at Mwanza)**

(Mwangesi, J.)

dated the 31st day of March, 2014

in

HC. Criminal Appeal No. 23 of 2012

RULING OF THE COURT

26th November & 2nd December, 2015

MJASIRI, J.A.:

In the District Court of Mwanza at Mwanza, the appellant James Pius Mwita Magesa Werema was convicted on two counts of armed robbery contrary to sections 285 and 286 of the Penal Code, Cap. 16 R.E. 2002 (the Penal Code) on August 26, 2008. He was charged with six (6) others, who were discharged and acquitted by the trial court. He was the only one who was found guilty and sentenced to thirty (30) years imprisonment and

twelve (12) strokes of the cane on each count. The sentences were to run concurrently.

In July 2005, the appellant filed an application for extension of time to file notice of appeal in the High Court. His application was dismissed (Rweyemamu, J). on March 21, 2006.

Following the dismissal order, the appellant proceeded to file his appeal in the High Court. The appeal was rejected by the High Court (Mwangesi, J.) in view of the order dismissing the application for extension of time to file a notice of appeal by the same court. The appeal was therefore not heard on merit. The appellant then lodged a notice of appeal to this Court against the decision of Mwangesi, J.

When the appeal was called on for hearing, Ms. Judith Nyaki, learned Senior State Attorney sought permission from the Court to raise a legal issue before proceeding with the appeal. She submitted that the notice of appeal did not comply with the requirements under Rule 68 (1) and (2) of the Tanzania Court of Appeal Rules, 2009 (the Court Rules). She stated that the appeal was not heard on merit by the High Court, therefore the notice of appeal did not make reference to the correct decision the appellant intended to appeal from.

She argued that as it is the notice of appeal which institutes the appeal, the appeal is incompetent and should be struck out.

The appellant appeared in person and had no legal representation. Being a layman and without the benefit of counsel, he did not have much to say. He denied seeking extension of time to file a notice of appeal. He repeatedly lamented that his appeal was rejected by the High Court.

We on our part are inclined to agree with the learned Senior State Attorney. The law is settled. In criminal appeals, it is the notice of appeal which institutes the appeal. Section 68 (1) and (2) of the Court Rules provides as follows:-

- 1. Any person who desires to appeal to the Court shall give notice in writing, which shall be lodged in triplicate with the Registrar of the High Court at the place where the decision against which it is desired to appeal was given, within thirty days of the date of that decision, and **the notice of appeal shall institute the appeal.***
- 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.
[Emphasis ours].

We have carefully reviewed the notice of appeal filed by the appellant and we are of the considered view that the notice of appeal falls short of the requirements under Rule 68 (2) of the Court Rules. Since the notice of appeal is not a valid one, it cannot institute the appeal. The appeal before us is therefore incompetent.

In **Kassim Said and Two Others v. Republic**, Criminal Appeal No. 69 of 2010 CAT (unreported) the Court, in making reference to Rule 68 (1) and (2) of the Court Rules stated thus:-

"The above Rule is couched in mandatory terms. The Rule must be complied with. Failure to do so will render the notice of appeal defective and hence the appeal lodged thereof will be declared incompetent. In that respect a notice of appeal is a vital document for the lodgment of appeal."

See - **Tatizo Msangole V. Republic**, Criminal Appeal No. 140 of 2010 and **Gabriel Mwakanemela V. Republic**, Criminal Appeal No. 204 of 2009 CAT (both unreported).

For the foregoing reasons, we are compelled to strike out the appeal for being incompetent. Order accordingly.

The appellant has a right to pursue his appeal against the decision of the District Court. This must be done in accordance with the law. The appellant did not have the *benefit* of counsel in this case. The need for access to legal assistance and counseling in our prisons is of paramount importance in the preparation of appeals before the highest Court in the land, especially for cases where appellants are facing very long mandatory minimum sentences.

DATED at MWANZA this 1st day of December, 2015.




E. M. K. RUTAKANGWA
JUSTICE OF APPEAL

S. MJASIRI
JUSTICE OF APPEAL

S. S. KAIJAGE
JUSTICE OF APPEAL

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


E.F. FUSSI
DEPUTY REGISTRAR
COURT OF APPEAL