

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

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

CRIMINAL APPEAL NO. 341 OF 2014

JULIUS S/O MGAWO APPELLANT

VERSUS

THE REPUBLIC RESPONDENT

**(Appeal from the Decision of the High Court of Tanzania
at Mbeya)**

(Mrema, J.)

dated the 25th day of June, 2004

in

DC. Criminal Appeal No. 40 of 2004

.....

RULING OF THE COURT

17th & 19th August, 2011

MBAROUK, J.A.:

When the appeal was called on for hearing, Mr. Mwandalama, learned Senior State Attorney, who represented the respondent/Republic, raised a preliminary objection notice of which was filed earlier on 14th August, 2015. The said notice was premised on the following points of law:-

- 1. That, the notice of appeal is incurably defective in law for failure to state briefly the nature of order/decision appealed against and specific date*

under which the said order/decision was made/given.

In support of the points of law he has raised, Mr. Mwandalama submitted that the notice of appeal on record has shown two different dates of the decision sought to be appealed against. He said, that raises doubt and confusion as to which among the two dates stated in the same notice of appeal is the correct date. It was his argument that, that omission contravened the provisions of Rule 68 (2) of the Court of Appeal Rules, 2009 (the Rules). In support of his argument he cited to us the decision of this Court in the case of **Ally Bakari v. Republic**, Criminal Appeal No 229 of 2011 (unreported).

Mr. Mwandalama also pointed out another defect and submitted that, the notice of appeal has indicated wrongly the nature of the offence of which the appellant intends to appeal against. He said, the correct order of the High Court sought to be appealed against is that of Mrema, J. which dismissed his appeal for being hopelessly time barred. However, the learned

Senior State Attorney submitted that, the notice of appeal shows that the appellant is appealing against the conviction on the offence of rape c/s 130 (1) and 131 (2) (a) of the Penal Code, Cap. 16 R.E. 2002 and sentence of life imprisonment. Mr. Mwandalama was of the opinion that as the appellant has failed to state the correct nature of the order of the appeal sought to be appealed against, that contravenes the provisions of Rule 68 (2) of the Rules. In support of his contention, he cited to us the decision in the case of **John Petro v. Republic**, Criminal Appeal No. 138 of 2010 which was quoted in the case of **Mwanya Ally Dadi @ Hamisi Mussa Mtondoima v. Republic**, Criminal Appeal No 105 of 2013 (both unreported).

Mr. Mwandalama then urged us to find that those two defects render the appeal incompetent and hence should be struck out.

On his part, the appellant who appeared in person and who fended for himself had nothing useful to say or respond on the preliminary point of law raised by the learned Senior State Attorney. He simply claimed that, as a prisoner he was not the

one who drafted the notice of appeal. He said, he just told the prison officer that he intends to appeal and was required to sign the notice of appeal which is now said to contain defects. As a lay person, he urged the Court to give him proper directions so as to pursue his appeal.

We fully subscribe to the submission made by the learned Senior State Attorney that the notice of appeal contains defects stated herein above. This Court has always emphasized the compliance of the requirements stated in Rule 68 (2) of the Rules, where the notice of appeal is required to contain the following:-

- 1. Should indicate a correct date of the judgment/decision sought to be appealed against.*
- 2. Should insert the name of High Court Judge and a number of the case to be appealed against.*
- 3. Should state briefly the nature of the acquittal, conviction, sentence, order or finding against which it is desired to be appealed against.*

See the decisions of this Court in the case of **Christian s/o Sanga v. Republic**, Criminal Appeal No 246 of 2013, **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, (All unreported), to name a few.

In the instant appeal. The notice of appeal has shown two different dates of the decision sought to be appealed against. That definitely will bring confusion as to which among the two dates is a correct date of the decision sought to be appealed against. As pointed out above, among the requirements under Rule 68 (2) of the Rules, the notice of appeal has to indicate a correct date of the decision sought to be appealed against. We are of the opinion that, such a defect renders the notice of appeal and the appeal incompetent.

In addition to that defect, as submitted by Mr. Mwandalama, the notice of appeal in this appeal has failed to state the correct nature of the order of the High Court desired

to be appealed against. We find that, this is contrary to the requirements under Rule 68 (2) of the Rules. As pointed out in the decision of this Court in the case of **John Petro v. Republic**, Criminal Appeal No. 130 of 2010 (unreported) where it was stated as follows:-

"It is now settled law that under the same Rule 61 (2) it was mandatory for a 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 2009 Rules, the purported appeal incompetent."

(Emphasis added.).

As pointed out earlier, the correct order sought to be appealed against is that of Mrema, J. dated 23rd July, 2009 which dismissed the appeal for being time barred and not the one shown in his notice of appeal. We are of the opinion that,

that omission contravenes the requirement under the provisions of Rule 68 (2) of the Rules, and that renders the notice of appeal defective and the appeal incompetent.

Under Rule 68 (1) of the Rules, it is the notice of appeal which institutes the appeal, but in this appeal, the same is defective. For that reason, we are constrained to find the appeal incompetent. For being incompetent, we strike out the appeal. However, if the appellant needs to re-institute the appeal, he can do so subject to the fulfilment of the requirement of the rules of limitation. It is so ordered.

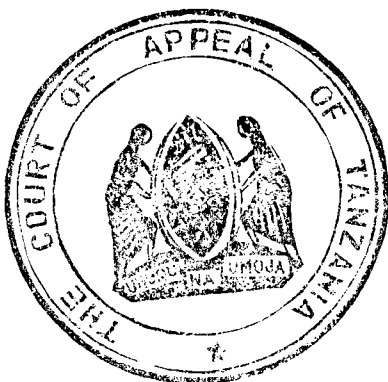
DATED at IRINGA this 18th day of August, 2015.

M.S. MBAROUK
JUSTICE OF APPEAL

B.M. 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