

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

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

CRIMINAL APPEAL NO. 75 OF 2014

MARTIN HAULEAPPELLANT

VERSUS

THE REPUBLIC.....RESPONDENT

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

(Manento, J.)

date 13th day of June, 2003

in

Criminal Appeal No. 33 of 2002

RULING OF THE COURT

18th & 25th August, 2015

MWARIJA, J. A.:

In the District Court of Songea, the appellant was charged with and convicted of the offence of Rape contrary to Sections 130 (1) (e) and 131 (1) of the Penal Code [Cap. 16 R.E. 2002] as amended by Sexual Offences (Special Provisions) Act, No. 4 of 1998. It was alleged that on the 9th day of March, 2000 during night time at Bombambili area within the District of Songea, Ruvuma Region, the appellant did have a carnal knowledge of one Regina d/o Mbunda, a girl aged 16 years. Upon conviction, the

appellant was sentenced to thirty years imprisonment term with corporal punishment of twelve strokes of the cane. He was also ordered to pay a compensation of Shs. 100,000/= to the victim, the said Regina d/o Mbunda.

The appellant was aggrieved and thus appealed to the High Court. His appeal to that court was summarily dismissed hence this appeal.

At the hearing of the appeal, the appellant appeared in person and unrepresented while the respondent Republic was represented by Mr. Shaban Mwegole, learned State Attorney. In his memorandum of appeal, the appellant raised a total of nine (9) grounds of appeal. For reasons which will be apparent herein however, we do not intend to consider the appeal on merit.

In the course of hearing the appeal, a point of law was raised by the Court **suo motu** on the competence or otherwise of the notice of appeal. We did so in exercise of the powers conferred on this Court by s. 4 (2) of the Appellate Jurisdiction Act, [Cap. 141 R. E. 2002]. The matter which prompted us to

raise the said point of law is the appellant's omission to indicate in his notice of appeal, the number of the case whose decision gave rise to the appeal.

Addressing the Court on that point, Mr. Mwegole submitted that it was mandatory under Rule 68 (2) of the Court of Appeal Rules, 2009 (the Rules) for the appellant to show in his notice of appeal, the number of the case from which he has preferred the appeal. The learned State Attorney submitted that the appellant's failure to comply with that requirement rendered the notice of appeal incurably defective thus causing the appeal to be incompetent.

The appellant who, as stated above, was not represented by a counsel, did not make any useful submission in relation to the point of law in question. He said that, being a layman, he did not have any sound argument to make in reply. He thus left the matter to the Court to decide.

We respectfully agree with Mr. Mwegole that it was mandatory for the appellant to show in his notice of appeal, the

number of the case from which he intended to appeal against. The requirement is provided for under R. 68 (2) and (7) of the Rules. Rule 68 (2) provides as follows:

"68 – (1)....

*(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 notice 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 added).

As to sub- rule (7) of Rule 68, the same provides as follows:

" (7) A notice of appeal shall be substantially in the Form B in the First Schedule to the Rules and shall be signed by or on behalf of the appellant."

Clearly, from its wording, sub-rule (7) of Rule 68 of the Rules is an imperative provision as far as substantial matters required to be contained in Form B of the First Schedule to the Rules are concerned. It means therefore that to a significant extent, a notice of appeal must contain the important matters required to be shown in that Form. The number of the case whose decision is sought to be appealed against is one of those important matters. The reason is that the Form specifically provides a space for filling such information. Other matters are the date of the decision intended to be appealed against, the name of the judge who decided the case and the nature of conviction, sentence or finding against which the appellant intends to appeal.

Indeed, this is not the first time that the Court is considering the effect of a failure by an appellant to comply with the requirements of Rule 68 (2) of the Rules. In the case of **Albanus Aloyce and Another v. The Republic**, Criminal Appeal No. 258 of 2014 (unreported), the appellants' notices of appeal did not comply with the requirements of Rule 68 (2). One of the defects

was that while they were appealing against the decision of the High Court in Criminal Appeal No. 133 of 2001, they indicated in their notices of appeal that they were appealing against Criminal Appeal No. 133 of 2002 thus, a wrong number of the case which they intended to appeal against. Citing among other previous decisions, the case of **Nichontinze s/o Rojeli v The Republic**, Criminal Appeal No. 228 of 2013 (unreported), the Court found that the appellants' notices of appeal were incurably defective thus rendering the appeal incompetent.

In the **Nichontinze case** (supra), the appellant failed to indicate in his notice of appeal the correct date of the judgment of High Court from which he intended to appeal. Having considered its previous decisions on the subject including **Hamisi s/o Yazidi and Another v The Republic**, Criminal Appeal No. 190 'B' of 2012 and **Kagoma Renald @ Rabani v The Republic**, Criminal Appeal No. 234 of 2013 (both unreported), the Court held that, failure to comply with the mandatory requirements of Rule 68 (2) of the Rules renders a notice of appeal defective thereby causing the intended appeal to be incompetent.

The Court also stated the matters which a notice of appeal must contain so as to comply with that Rule. It observed that in order to comply with Rule 68 of the Rules, the appellant must do the following in his notice of appeal:

"(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." (Emphasis added).

In the present case, as stated above, the appellant did not insert in his notice of appeal the number of High Court appeal whose decision he intended to appeal against. That omission renders his notice of appeal incurably defective and the intended appeal is therefore incompetent. On the basis of the above stated reasons therefore, we find the appeal to be incompetent. In the event, the same is hereby struck out.

It is so ordered.

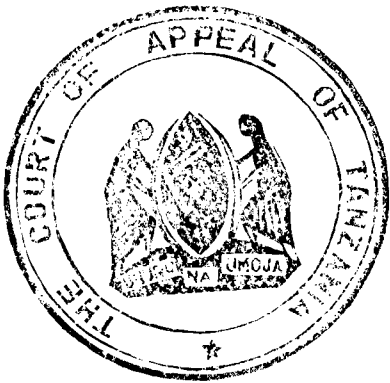
DATED at IRINGA this 24th day of August, 2015.


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