

IN THE COURT OF APPEAL OF TANZANIA

AT IRINGA

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

CRIMINAL APPEAL NO. 271 OF 2014

RENATUS MUHANJE APPELLANT

VERSUS

THE REPUBLIC RESPONDENT

(Appeal from Ruling of the High Court of Tanzania

at Songea)

(Manento, J.)

dated the 31st day of March, 2003

in

Misc. Criminal Application No. 3 of 2002

.....

RULING OF THE COURT

25th & 28th August, 2015

MMILLA, J. A.:

The appellant, Renatus Muhanje was charged in the District Court of Songea in Songea Municipality in Ruvuma Region with the offence of rape contrary to sections 130 and 131 (1) of the Penal Code Cap. 16 of the Laws as amended by section 5 of the Sexual Offences Special Provisions Act, No. 4 of 1998. Upon conviction, he was on 7.2.2001 sentenced to life imprisonment. It is noteworthy that he did not readily appeal against that decision.

The appellant's desire to appeal arose almost after one year had elapsed when on 9. 5. 2002, he filed Misc. Criminal Application No. 3 of 2002 in the High Court of Tanzania at Songea, seeking that court's indulgence to extend time in which to file a notice of appeal and the appeal itself out of time. That application was heard and determined by Manento, J. who, besides dismissing the application for want of sufficient cause, he also interfered with the sentence which was meted to the appellant by the trial court by reducing it from life imprisonment to 30 years imprisonment. Aggrieved by the High Court's decision to dismiss his application, the appellant preferred the present appeal to this Court.

When his appeal was called on for hearing, the appellant appeared in person and was undefended, while Mr. Wilbroad Ndunguru, learned State Attorney, appeared for the respondent Republic.

At the commencement of the hearing of the appeal, the Court *suo mottu* asked the parties to address it on the competence or otherwise of the appeal on account that **the nature of the decision sought to be appealed against was incorrectly shown in the notice of appeal.**

After carefully examining the notice of appeal, Mr. Ndunguru conceded that though Misc Criminal Application No. 3 of 2002 was seeking extension of time in which to appeal, the notice of appeal has indicated that the appellant is appealing against the decision of Hon. Manento, J whereby he was convicted of rape contrary to section 130 and 131 (1) of the Penal Code and sentenced to thirty (30) years imprisonment. In view of this, he added, that offends the provisions of Rules 68 (2) of the Tanzania Court of Appeal Rules, 2009 (the Rules). He pressed the Court to find the irregularity fatal, rendering the appeal incompetent, thus liable to be struck out.

The appellant, understandably a layman, had nothing to say in respect of this legal point. He left his fate in the hands of the Court.

We are firm that Misc. Criminal Application No. 3 of 2002, whose decision is sought to be impugned in this appeal, was concerned with the question of extension of time in which to appeal. The issue of conviction for the offence of rape did not arise. However, contrary to what Misc. Criminal Application No. 3 of 2002 was all about as shown above, the notice of appeal indicated **"the conviction in respect of the offence of rape"** to be the **"nature of the order or finding being appealed**

against." In the circumstances, we agree with Mr. Ndunguru that to that extent, the notice of appeal offended the provisions of Rule 68 (2) of the Rules. That Rule provides that:-

"(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 provided].

A situation such as the present was encountered by the Court in the case of **Simalike Mwanjoka v. Republic**, Criminal Appeal No. 138 of 2010, CAT (unreported). In that case Mr. Kakolaki, learned State Attorney who appeared for the respondent Republic, had submitted that the notice of appeal wrongly indicated the decision appealed against to have been in respect of Criminal Application No 1 of 2007 delivered by the High Court (Lukelelwa, J.) on 23/07/2007; while the proper decision which was being appealed against was **Criminal Revision No 1 of 2007**. He submitted

also that the notice of appeal did not state the nature of conviction, acquittal and order or finding appealed against. The Court stated that:-

“Going by the appellant’s notice of appeal we would fully agree with Mr. Kakolaki that it is fatally defective in its reference to the wrong registry number of the case or citation, namely, Criminal Application No 1 of 2007; instead of the correct reference, i.e. Criminal Revision No 1 of 2007 **and in its complete omission to state briefly the nature of the conviction, sentence or order against which it is desired to appeal to the Court as is required under Rule 61(2) old Rules (Rule 68 (2) new Rules)**. These two reasons would have been sufficient by themselves to uphold the purported appeal as incompetent.” [Emphasis added].

Ipsa jure therefore, the requirement for the notice of appeal to state the nature of the order or finding sought to be appealed against is a mandatory requirement under this Rule. As seen above, where it may not be so stated, then the notice of appeal is fatally defective.

Since it is the notice of appeal which in terms of Rule 68 (1) of the Rules institutes an appeal, a fatally defective notice of appeal as we have found it to be in our present case, renders the appeal incompetent and

thus liable to be struck out. In the circumstances, we do not hesitate to, and we hereby strike out the appeal as prayed by Mr. Ndunguru.

Order accordingly.

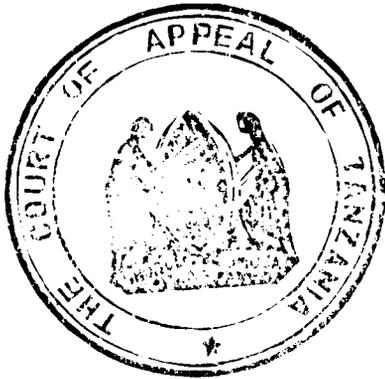
DATED at IRINGA this 27th day of August, 2015.

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