

IN THE COURT OF APPEAL OF TANZANIA

AT IRINGA

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

CRIMINAL APPEAL NO. 88 OF 2015

SABINUS KIHULUAPPELLANT

VERSUS

THE REPUBLIC RESPONDENT

(Appeal from the decision High Court of Tanzania

at Songea)

(Fikirini, J.)

dated the 17th day of March, 2014

in

Criminal Session No. 36 of 2014

.....

RULING OF THE COURT

25th & 27th August, 2015

MBAROUK, J. A.:

When the appeal was called on for hearing, the Court wanted to satisfy itself as to whether the appeal was properly before it. That prompted us to raise *suo motu* the point on the competence or otherwise of the notice of appeal. This was for the reason that the appellant's notice of appeal indicated a wrong number of the case sought to be appealed against.

Instead of indicating Criminal Session Case No. 33 of 2013, the notice of appeal indicated Criminal Session Case No. 15 of 2012 which was not the actual number of the appeal intended to be appealed against.

In response to the point raised by the Court ***suo motu***, Mr. Rwezaula Kaijage, learned advocate who represented the appellant readily conceded to the defect. He therefore, urged the Court to find the notice of appeal incurably defective as the defect is fatal. For that reason, he prayed for the appeal to be struck out for being incompetent.

On his part, Mr. Wilbroad Ndunguru, learned State Attorney for the respondent/Republic submitted that, there is no doubt that the notice of appeal has indicated a wrong number of the case intended to be appealed against. He further added that, such a defect is fatal and renders the appeal incompetent. He thus prayed that the appeal be struck out.

It is now settled that, in compliance with the mandatory provisions of Rule 68 (2) of the Court of Appeal Rules, 2009

(the Rules), a notice of appeal must insert a correct number of the case to be appealed against. Various decisions of this Court have emphasized the necessity of compliance with the requirements under Rule 68 of the Rules. For instance, see the decision in the case of **Nichontize s/o Rojeli v. the Republic**, Criminal Appeal No. 228 of 2013 (unreported), where this Court stated that a notice of appeal has to contain the following:-

- "1. Indicate a correct date of the judgment 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).

After we have gone through the notice of appeal under focus, we have satisfied ourselves that the appellant has failed

to insert a correct number of the High Court decision sought to be appealed against in his notice of appeal. For that reason we find the notice of appeal incurably defective and the appeal incompetent. For being incompetent, we hereby strike it out.

DATED at IRINGA this 26th 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