

IN THE COURT OF APPEAL OF TANZANIA

AT ZANZIBAR

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

CRIMINAL APPEAL NO. 569 OF 2015

KHAMIS ABDUL-WAHAB MAHMOUD.....APPELLANT

VERSUS

DIRECTOR OF PUBLIC PROSECUTION.....RESPONDENT

(Appeal from the judgment of the High Court of Zanzibar at Vuga)

(Rabia, J.)

dated 27th February, 2015

in

Criminal Case No.66 of 2008

.....

RULING OF THE COURT

23rd & 28th November, 2016

KIMARO, J.A:-

The appellant, Khamis Abdul - Wahab Mahmoud was charged and convicted of the offence of murder contrary to sections 196 and 197 of the Penal Act, No. 6 of 2004. He was alleged to have with malice aforethought killed Mkubwa Juma Khamis. He was sentenced to suffer death by hanging.

Aggrieved with the conviction and the sentence he filed an appeal to this Court. The appeal was called for the hearing today (23rd November, 2016). The appellant was present in Court with legal services of Mr. Rajab Abdallah Rajab, learned advocate. Mr. Suleiman Haji Hassan, learned Senior State Attorney, represented the respondent. He was assisted by Mr. Said Salum and Mr. Hamis Juma Hamis, both learned State Attorneys.

By a notice of preliminary objection filed earlier on under rule 4(2) (a) of the Court of Appeal Rules, 2009 (the Rules), the respondent challenged the competence of the appeal. The preliminary objection has two points as shown hereunder:-

- (a) That the purported notice of appeal is incurably defective hence it fails to comply with the Court of Appeal Rules.
- (b) The notice of appeal was improperly lodged, hence renders the appeal incompetent.

Making submissions in support of the preliminary objection, the learned Senior State Attorney said that, the notice of appeal at page 151 of the record of appeal is defective as it is not drawn in compliance with Rule

68(2) and 75 of the Court of Appeal Rules 2009. Pointing out the defects in the notice of appeal, the learned Senior State Attorney said Form B provides vital information which has to be included in the notice of appeal. And since the appellant is a convict, said the learned Senior State Attorney, the notice of appeal had to be lodged through the Officer in charge of the Prison where he is serving the sentence (giving particulars which substantially comply with Form B/1). He said apart from the appellant failing to lodge the notice of appeal through the Prison officer in charge where he is serving the sentence, the notice of appeal has discrepancies on the date of drawing and filing. Whereas the notice of appeal shows that it was drawn on 16th March 2015, at the same time it shows that it was presented for filing on 5th March 2015. The Registrar of the High Court signed it on 9th March 2015. He said the discrepancy in the notice of appeal on the dates renders it defective and hence there is no appeal before the Court. He prayed that the notice of appeal be struck out.

The learned advocate representing the appellant readily conceded that the notice of appeal is defective. He said the appeal has not been

properly initiated in accordance with Rule 68(1) of the Rules because the notice of appeal is defective.

On our part we do not think that the matter needs to detain us because the discrepancy on the notice of appeal is apparent on the face of the record.

According to form B/1 information necessary to make a notice of appeal valid is to show the date when the notice of appeal was signed by the appellant or the advocate for the appellant, and the date of lodging the same to the Registrar of the High Court. In a situation like this one in which the appellant is in prison, the date of the judgment and conviction, date of entering prison, date of lodging the intention to appeal and the name of the certifying Officer in charge of prison plus his signature, date and date of transmission has to be given.

Apart from the discrepancy on the date of drawing the notice of appeal and that of filing which shows that the notice of appeal was lodged

before it was drawn and signed by the appellant, it lacks particulars of the prison and the prison officer in charge of the prison where the appellant is serving the sentence and the date of the transmission of the notice of appeal for filing before the High Court. 16th March, 2015 is shown to be the date when the appellant prepared the notice of appeal. According to the stamp of the Court of Appeal at the top right side of the notice of appeal, 5th March 2015 is the date when the notice of appeal was received by the sub registry of the Court of Appeal at the High Court of Zanzibar at Vuga and it was signed by the Registrar of the High Court on 9th March 2015. The dates are conflicting and it is hard to ascertain when the notice of appeal was drawn.

There are a lot of authorities on what constitutes a valid notice of appeal. Some of these authorities are **Albunus Alyoce and Another V R** Criminal Appeal No. 258 of 2014, **Elia Masemo Kachala and two others V R** Criminal Appeal No. 156 of 2012, **Hamis s/o Yazid and Another V R** Criminal Appeal No. 234 of 2013 and **Abeid s/o Seif V R** Criminal Appeal No. 228 of 2013, all unreported.

With this certain and apparent non-compliance of Rules 68(1), (2) and (7) of the Court Rules, the notice of appeal is definitely defective and hence there is no appeal before the Court. We strike out the notice of appeal and the appeal itself.

DATED at ZANZIBAR, this 24th day of November, 2016

N. P. KIMARO
JUSTICE OF APPEAL

M. S. MBAROUK
JUSTICE OF APPEAL

A. G. MWARIJA
JUSTICE OF APPEAL

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



E. Y. Mkwizu
E. Y. Mkwizu
DEPUTY REGISTRAR
COURT OF APPEAL