

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

(CORAM: MASSATI, J. A., MUSSA, J. A. And MWARIJA, J. A.)

CRIMINAL APPEAL NO. 543 OF 2015

KANUDA DAUDI @ BODOLO APPELLANT

VERSUS

THE REPUBLIC RESPONDENT

(Appeal from the Judgment of the High Court of Tanzania, at Tabora)

(Mruma, J.)

dated the 12th day of June, 2015

in

Criminal Session Case No. 111 of 2012

.....

RULING OF THE COURT

22nd & 25th April, 2016

MASSATI, J.A.:

The appellant was convicted of the offence of murder contrary to section 196 of the Penal Code, by the High Court sitting at Maswa. According to the information laid at his door, it was alleged that on the 2nd day of June, 2011, at Luguru Ward, within Bariadi District in Shinyanga Region, he murdered one PANIEL AYOUB @ NAKULILO. His conviction followed his plea of not guilty and a trial that involved five (5) prosecution witnesses and one documentary exhibit.

Soon after his conviction on 12th June, 2015, the appellant lodged a notice of appeal with the prison authorities on the same day. It was transmitted to the High Court at Tabora on the 18th June, 2015. The Notice of Appeal appears on page 82 of the record of appeal and this is how it looks like:-

NOTICE OF APPEAL

*TAKE NOTICE THAT **KANUDA s/o DAUDI @ BODOLO** appeals to the Court of Appeal of Tanzania against the decision of Honourable **MR. Justice A. R. MRUMA, JUDGE** given at MASWA on the 12th day of June, 2015 whereby the appellant was convicted and sentenced to **death by hanging**.*

The appeal is against the conviction and sentence and that the appellant intends to be present at the hearing of the appeal.

The address of service of the appellant is BUTIMBA PRISON, P. O. BOX MWANZA.

Dated this 12th day of June, 2015.

***Signed* Appellant**

TO: The Registrar of the High Court of Tanzania at TABORA lodged in the High Court of Tanzania at TABORA, on the 18th day of June, 2015.

On receipt of the Notice of Appeal, and following the dictates of Rule 71 (1) of the Court of Appeal Rules, 2009 (the Rules) the Registrar of the High Court prepared the record of appeal. This enabled the appeal to be set for hearing.

At the hearing, the appellant was present and represented by Mr. Mugaya Mtaki, learned counsel. The respondent/Republic had the services of Mr. Miraji Kajiru, learned State Attorney.

Earlier on, the respondent had filed a Notice of Preliminary Objection under Rule 4 (1) and (2) (a) of the Rules. The said notice is reproduced below for ease of reference:-

NOTICE OF PRELIMINARY OBJECTION

(Made under rules 4 (1) and (2) (a) of the Tanzania Court of Appeal Rules, 2009)

TAKE NOTICE that on the first day of hearing of this appeal the respondent will raise a preliminary objection on point of law against the appellant that:-

1. *The appeal is incompetent before this court for failing to comply with rule 68 (2) and (7) of the Tanzania Court of Appeal Rules, 2009 as also stated in Criminal Appeal No. 193 of 2015 between **DPP vs MAGOBO NJIGE and 2 OTHERS CAT TABORA.** (unreported) The respondent therefore will pray that this appeal be strike out.*

Dated at TABORA this 21st day of April, 2016.

So, on the day of hearing Mr. Kajiru, submitted that the appeal was incompetent, because it was instituted by a defective notice of appeal. He went on to argue that the Notice was defective because, contrary to Rule 68 (2) of the Rules, it did not state the nature of the conviction. In support, he cited the recent decision of this Court in **DPP vs MAGOBO NJIGE AND 2 OTHERS**, Criminal Appeal No. 193 of 2015 (unreported). He therefore, prayed that the appeal be struck out.

Mr. Mtaki readily conceded to the preliminary objection. He admitted that the notice of appeal did not state the nature of the conviction sought to be appealed against; and on the strength of the decision of this Court in **DPP vs MAGOBO NJIGE AND 2 OTHERS** (*supra*) the appeal was incompetent and should be struck out.

As we held in our recent decision in **DPP vs MAGOBO NJIGE AND 2 OTHERS** (*supra*), it is mandatory for notices of appeal in intended criminal appeals to comply with the stipulations set out in Rule 68 (2) and 68 (7) (which prescribes Form B). One of such stipulations is that the notice must **“state briefly, the nature of the acquittal, conviction, sentence,**

elaborated that the word "nature" in the Rule, meant no more than:-

"Such particulars as would reflect the actual result in relation to the actual offence, sentence, order, or finding complained of."

We went on that:-

"For instance in the case of a conviction, the Rule expects the appellant to specify the actual offence of which he stands convicted."

A quick glance at the appellant's notice of appeal in the present case, shows that it lacks the particulars of the specific offence, of which the he stands convicted and seeks to impugn. It is obviously defective, as both learned counsel have submitted.

For the foregoing reasons, we uphold the preliminary objection. We declare that the notice of appeal is defective. Since, a notice of appeal institutes an appeal in terms of Rule 68 (1) of the Rules, the present defective notice, could not have instituted a competent appeal. In the

event, the appeal is incompetent. It is accordingly struck out. The appellant may reinstitute the appeal subject to the law of limitation.

It is so ordered.


DATED at **TABORA** this 22nd day of April, 2016.

S. A. MASSATI
JUSTICE OF APPEAL

K. M. MUSSA
JUSTICE OF APPEAL

A. G. MWARIJA
JUSTICE OF APPEAL

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


P. W. BAMPIKYA
SENIOR DEPUTY REGISTRAR
COURT OF APPEAL