

IN THE COURT OF APPEAL OF TANZANIA

AT TABORA

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

CRIMINAL APPEAL NO. 370 OF 2015

MWANDU ABEDI.....APPELLANT

VERSUS

THE REPUBLIC.....RESPONDENT

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

(Mruma, J.)

Dated the 26th day of June, 2014

In

Criminal Session Case No. 60 of 2009

RULING OF THE COURT

18th & 20th April, 2016

MUSSA, J.A.:

In the High Court of Tanzania, Tabora Registry, the appellant was arraigned and convicted for the murder of a certain Mungo Tungi. Upon conviction, he was handed down the mandatory death sentence (Mruma, J.). He is presently aggrieved upon a memorandum of appeal which is comprised of two points of grievance. Nonetheless, for reasons that will shortly become apparent, we need not belabor on the factual background as well as the points raised in the memorandum of appeal.

At the hearing before us, the appellant was represented by Mr. Kamaliza Kayaga, learned Advocate, whereas Mr. Rwegira Deusdedit stood for the respondent Republic.

At our prompting, Mr. Kayaga readily conceded that the Notice of Appeal is incurably defective for not disclosing the nature of the conviction. The consequences of such defect, he added, is to render incompetent the entire appeal. He, thus, urged the Court to strike out the appeal. To this submission, Mr. Deusdedit agreed and fully supported his learned friend. When asked to rejoin, Mr. Kayaga came with a suggestion that the Court should avail the appellant an opportunity to rectify the defect, the more so as the infraction was not caused by him personally but, rather, the prison authorities who drafted the Notice of Appeal.

As we gear towards addressing the point of contention, it is, perhaps, opportune to extract the relevant portion of the notice of appeal which goes thus:

"NOTICE OF APPEAL

*Take Notice that **MWANDU s/o ABEID** Appeals in the Court of Appeal of Tanzania against the decision*

*of the Honorable Mr. Justice A.R. Mruma- JUDGE
Day of 27th JUNE, 2014 and sentenced to DEATH.*

The Appeal is against conviction and sentence.”

It is pertinent to observe that the extracted portion of the Notice of Appeal does not quite reveal the nature of the conviction. Upon numerous decisions of the Court, it is now settled that a Notice of Appeal must, *inter alia*, imperatively state the nature of a conviction, sentence or finding against which he desires to appeal. In, for instance, the unreported Criminal Appeal No. 130 of 2010 **John Petro vs. The Republic**, the Court stressed in reference to the old Rules:-

“... it was a mandatory for the notice of appeal to state the nature of the conviction, sentence, order or finding of the High Court against which it is desired to appeal. Failure to do so rendered, and still renders under the 2009 Court Rules, the purported appeal incompetent.”

In terms of Rule 68 (1) of the Tanzania Court of Appeal Rules, 2009 (the Rules), it is the Notice of Appeal which institutes an appeal and, thus, upon the defect, the present Notice of Appeal is invalid and cannot be said

to hold that this purported appeal is incompetent. Mr. Kayaga's prayer for rectification is misconceived and impracticable much as the Court cannot allow a rectification upon a matter which is improperly before it. The fitting order which we hereby prescribe is to strike out the incompetent appeal.

The appellant is at liberty to lodge a fresh Notice of Appeal subject to limitation. Order accordingly.

DATED at TABORA this 19th 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