

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

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

**CRIMINAL APPEAL NO. 193 OF 2015**

**THE DIRECTOR OF PUBLIC PROSECUTIONS ..... APPELLANT**

**VERSUS**

**1. MAGOBO NJIGE  
2. BUPINA MIHAYO  
3. SENG MABIRIKA } ..... RESPONDENTS**

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

**(Rumanyika, J.)**

**dated the 31<sup>st</sup> day of July, 2014**

**in**

**Criminal Session Case No. 2 of 2012**

.....

**RULING OF THE COURT**

19<sup>th</sup> & 20<sup>th</sup> April, 2016

**MASSATI, J.A.:**

The respondents were arraigned before the High Court at Kahama in Shinyanga Region, on an information for doing grievous harm with intent to maim or disfigure or disable, contrary to section 222 (a) of the Penal Code. The particulars alleged that on the 26<sup>th</sup> April, 2010, at Luhanga Village, in Kahama District, they did grievous harm to one KABULA d/o NKALANGO, with intent to maim or disfigure or disable her. To those allegations, the respondents pleaded not guilty.

After a protracted trial that attracted 16 prosecution witnesses, and 11 documentary exhibits, and upon hearing the respondents, the High Court acquitted the trio, in a judgment handed down on 31<sup>st</sup> July, 2014.

The Director of Public Prosecutions (the DPP) was aggrieved by the said decision. So, on the 11<sup>th</sup> August, 2014, he lodged a Notice of Appeal, which appears on page 159 of the record of appeal. For ease of reference and for purposes of this Ruling, we reproduce below an extract of the said notice:-

**NOTICE OF APPEAL**

*(Made under rule 68 (1) of the Court of Appeal Rules, 2009)*

***TAKE NOTICE*** that the Director of Public Prosecutions on behalf of the republic appeals to the court of appeal of Tanzania against judgment at the High Court (Hon. S. M. RUMANYIKA) given at Kahama on 31<sup>st</sup> day of July, 2014 in the High Court Criminal Session Case No. 02 of 2012 where by the accused persons were acquitted.

*The address of service of the appellant is .....*

***SENIOR STATE ATTORNEY INCHARGE,  
ATTORNEY GENERAL'S CHAMBERS,***

*NHC BULIDING,  
2&3 FLOOR,  
P.O BOX 635,  
**SHINYANGA.***

*Dated at Shinyanga this 6<sup>th</sup> day of August, 2014*

At the hearing of the appeal, the appellant was represented by Mr. Rwegira Deusdedit, learned State Attorney. The respondents were represented by Mr. Mugaya Mtaki, Mr. Kamaliza Kayaga and Mr. Mussa Kassim, learned counsel for the first, second and third respondents respectively.

When the appeal was called on for hearing, Mr. Mtaki prayed for, and without any objection from the appellant, was granted leave to orally raise a point of law which he should have brought by a written notice of preliminary objection(s).

Mr. Mtaki's point was that, the Notice of Appeal was defective because it did not state the nature of the acquittal appealed against. Elaborating, the learned counsel submitted that in terms of Rule 68 (2) of the Court of Appeal Rules, 2009 (the Rules), it was incumbent upon the appellant to stipulate of which offence the respondents were acquitted. He went on to submit that the omission was fundamental and as the notice of appeal

institutes an appeal under Rule 68 (1) of the Rules, the defective notice renders the appeal incompetent. So, he prayed that the incompetent appeal be struck out. Both Mr. Kayaga and Mr. Kassim, supported their colleague's submission and prayers.

Although Mr. Deusdedit, was initially not persuaded by the objection on the ground that there was no space in Form B to the First Schedule to the Rules, to insert the word "acquittal," he eventually turned around and agreed with Mr. Mtaki that with a little ingenuity, the word "acquittal" could replace the word "conviction" which now appears in Form B. So, he too, urged the Court to find that the Notice of Appeal was defective, rendering the appeal incompetent. So, it should be struck out, he argued.

We need not belabour on the position that in terms of Rule 68 (1) of the Rules, a notice of appeal institutes a criminal appeal to this Court. There are numerous decisions to that effect by this Court, as instanced by **JUMA BUNYIGE vs R**, Criminal Appeal No. 417 of 2007 (unreported), which was based on Rule 61 (1) of the Court of Appeal Rules, 1979 (the old Rules) which is in *pari materia* with Rule 68 (1) of the Rules.

It is also settled law that for a notice of appeal to be valid, it must, comply with the stipulations set out in Rule 68 (2), and 68 (7) (which sets out Form B). That, it is mandatory for all notices of appeal to comply with those requirements have been emphasized by a plethora of cases decided by this Court. (See **MAJID GOA VEDASTUS vs R**, Criminal Appeal No. 268 of 2006; **WILLIAM SUNDAY vs R**, Criminal Appeal No. 75 of 2007; **LUCHALAMILA MAWINGA vs R**, Criminal Appeal No. 319 of 2007 and **EMMANUEL A. KANENGO vs R**, Criminal Appeal No. 432 of 2007 (all unreported) which reflect the position under Rule 61 (2) of the old Rules).

The position remains the same under the current Rules. That, this is so, is reflected in the Court's recent decisions in **ELIA MASENA KACHALA AND TWO OTHERS vs R**, Criminal Appeal No. 156 of 2012 and **BAHATI NDUNGURU @ MOSES vs R**, Criminal Appeal No. 272 of 2014 (both unreported).

In the present case, there is no dispute that the embattled Notice of Appeal does not disclose the nature of the acquittal against which it is sought to appeal. This is contrary to Rule 68 (2) of the Rules which provides that:-

*68 (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.*

What we understand by the use of the word "**nature**" that appears in the above cited Rule, is that, it simply means, such particulars as would reflect the actual result in relation to the actual offence, sentence, order or finding complained of. For instance in the case of a conviction, the Rule expects the appellant to specify the actual offence of which he stands convicted. In the case of an acquittal, it is expected that the appellant would specify the actual offence (s) of which the respondent(s) were acquitted. In the case of a sentence the Notice is expected to show the actual sentence pronounced by the convicting or appellate court, against which the appeal is preferred. Such particulars are also required in the case of appeals against "orders" and other "findings".

should have specified the offence of which the respondents were acquitted. As this was not done, the Notice of Appeal is no doubt defective.

In the result, we uphold the preliminary objection raised by the respondents and find that the Notice of Appeal is defective. The purported appeal instituted by the said Notice is therefore incompetent. It is accordingly struck out.

Order accordingly.

**DATED** at **TABORA** this 19<sup>th</sup> 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. BAMPIHYA  
**SENIOR DEPUTY REGISTRAR**  
**COURT OF APPEAL**