

IN THE COURT OF APPEAL OF TANZANIA

AT MBEYA

(CORAM: KIMARO, J. A., MUGASHA, J. A., And MZIRAY, J.A.)

CRIMINAL APPEAL NO. 575 OF 2015

ELIA KUSOTA @ LEKAMO KAMILO APPELLANT

VERSUS

THE REPUBLIC RESPONDENT

(Appeal from the decision of the High Court of Tanzania

At Mbeya)

(Levira, J.)

Dated 14th July, 2015

in

DC. Criminal Appeal No. 89 of 2014

.....

RULING OF THE COURT

11th & 13th April, 2016

MUGASHA, J.A.:

The appellant, Elia Kusota was convicted by the District Court of Chunya of the offence of cattle theft contrary to sections 268 and 265 of the Penal Code [**CAP. 16 RE. 2002**]. He was sentenced to imprisonment to a term of five (5) years. He unsuccessfully appealed to the High Court in Criminal Appeal No. 89 of 2014, which was dismissed by Dr. Levira, J. on 14/7/2015. Further aggrieved, the appellant has preferred an appeal

to this Court. Initially, the appellant, took initial steps to institute the appeal whereby on 31/7/2015, he lodged what he considered to be a notice of appeal.

According to Rule 68(1) of the Tanzania Court of Appeal Rules, (the Rules), it is a notice of appeal which institutes a criminal appeal in this Court. Thus, a valid notice of appeal must comply with mandatory provisions of Rule 68(2) of the Rules which requires;

"Every notice of appeal shall briefly state the nature of 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."

Sub rule 7 of Rule 68 further provides that:

"A notice of appeal shall be substantially in the form B in the first schedule to these Rules, and shall be signed by or on behalf of the appellant."

One of the essential contents of form B is the date of the decision of the Criminal matter in the High Court sought to be appealed against. In the case at hand, the respective decision is dated 14/7/2015.

When the matter was called on for hearing, Ms. Catherine Paul learned State Attorney for the respondent Republic, rose to argue a point of preliminary objection on a point of law, pursuant to a notice which she had earlier on lodged as follows:

"The appeal is not properly before the Court for it offends Rule 68(2) of the Court of Appeal Rules, 2009"

In her brief and precise oral submission, Ms. Paul learned State Attorney pointed out that, the appellant was aggrieved by the dismissal in the High Court Criminal Appeal No. 89 of 2014 before Dr. Levira, J. which was determined on 14/7/2015 and not the 27/7/15 as asserted by the appellant in the notice of appeal.

On the other hand, when the appellant was referred to the respective notice of appeal, he conceded that, it indicates that, the

judgment sought to be appealed against is dated on 14/7/2016 and not 27/7/2015. However, in what seems to be throwing the blame on the Prison Authorities, he said that the notice of appeal was prepared by the Prison's Admission Officer.

In the matter under scrutiny, there is a variation of the dates of the decision which is a subject of the appeal and that which appears in the appellant's notice of appeal. Page 167 of the record of appeal, reflects that, the decision of the High Court which is the subject of this appeal was delivered on 14/7/2015. However, the notice of appeal at page 168 of the record; indicates that the same decision was delivered on 27th July, 2015.

In the case of **TANO MBIKA VS REPUBLIC, CRIMINAL APPEAL NO 200 OF 2013** (Unreported), the Court among other things stated that: For a notice of appeal to this Court to be valid, it must show the correct date of the challenged judgment. The Court further emphasized that the notice of appeal must indicate a correct date of judgment to be appealed against in **NICHONTIZE S/O ROJELI VS REPUBLIC, CRIMINAL APPEAL NO. 228 of 2013** and **FLORENCE ATHANAS @ BABA ALI &**

ANOTHER VS R, CRIMINAL APPEAL NO. 93 of 2015 (all unreported).

The absence of the correct date of the judgment in the notice of appeal, renders the notice of appeal defective. Since under Rule 68(1), it is a notice of appeal which institutes the appeal, there is no proper appeal before us.

We agree with the learned State Attorney that, the aforesaid defects render the notice of appeal defective and it contravenes Rule 68(2) and 7 of the Court of Appeal Rules (supra). Given the stated defect, the purported appeal is incompetent and we accordingly strike it out.

DATED at MBEYA this 12th day of April, 2016.

N. P. KIMARO
JUSTICE OF APPEAL

S. E. A. MUGASHA
JUSTICE OF APPEAL

R. E. MZIRAY
JUSTICE OF APPEAL

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

