

**IN THE COURT OF APPEAL OF TANZANIA**

**AT MBEYA**

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

**CRIMINAL APPEAL NO. 93 OF 2015**

**1. FLORENCE ATHANAS @ BABA ALI }  
2. EMMANUEL MWANANDENJE } .....APPELLANTS**

**VERSUS**

**THE REPUBLIC ..... RESPONDENT**

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

**(Mwambegele, J.)**

**dated the 8<sup>th</sup> day of September, 2014**

**in**

**Criminal Appeal Nos. 64 & 66 of 2013**

**.....**

**RULING OF THE COURT**

5<sup>th</sup> & 11<sup>th</sup> April, 2016

**MZIRAY, J. A.:**

In the District Court of Sumbwanga at Sumbawanga, the appellants herein together with one Justine Mwanauta were charged with two counts of Armed Robbery Contrary to section 287A of the Penal Code. The 3<sup>rd</sup> Count of unlawful possession of Fire Arms and Ammunition without Licence Contrary to section 4 (1) and (2) and 34(1) and (2) of the Arms and Ammunition Act, Cap. 223 R.E. 2002 was leveled against the first appellant only. The two appellants were

convicted of the two counts of armed robbery and each was sentenced to serve 30 years term in gaol and in addition, the first appellant was sentenced to serve 15 years in gaol for the 3<sup>rd</sup> count of the charge.

Aggrieved by the convictions and sentences, they appealed to the High Court of Tanzania at Sumbawanga. The High Court allowed the appeal against Justine Mwanauta in both counts. He was therefore set free. As for the appellants, the High Court upheld the decision of the lower court thus, this second appeal.

Their separate memorandum of appeal raise the following grounds of complaint namely;

1. That the honourable judge of the High Court erred in point of law and fact by dismissing the appeal without considering the economic offence in the charge sheet prosecuted without certificate from the DPP.
2. That the honourable judge erred in law and fact when he dismissed the appeal relying on the improper identification by PW7.
3. That the honourable judge erred in law and fact by believing the evidence of PW7 that the appellants booked the room at Kaengesa guest house without calling reception book to corroborate the same.

4. The honourable judge erred in law and fact by giving judgment relying on the cautioned statements made contrary to the law.
5. That there was no evidence from the Ballistic expert to prove that exh. P 5 were ammunitions.
6. There was no seizure note to prove that the appellant were found in possession of cartridges.
7. That the honourable judge erred in law and fact in relying on the evidence of dock identification in the absence of identification parade.
8. That the charge was not proved beyond reasonable doubt.

Before us, the appellants appeared in person. They were all set to argue the grounds of appeal that they had earlier on filed. The respondent/ Republic, was represented by Ms. Catherine Gwaltu, learned Senior State Attorney assisted by Mr. Ofmedy Mtenga, learned State Attorney.

Before the hearing of the appeal, Ms. Catherine, learned Senior State Attorney sought the Court's indulgence to raise a point of law. When the Court allowed her, she went on to point out certain discrepancies in the appellants notices of appeal. She pointed out that the notices are in respect of the decision of the High Court of Tanzania

at Sumbwanga (Mwambegele, J.) delivered on 8/10/2014 in Criminal Case No. 93 of 2013. She went on stating that according to the record the decision complained of was given on 8/9/2014. She argued that the variance of dates on when the decision complained of was given in both notices rendered the same to be defective for which, the appeal should be struck out.

On their part, the appellants had nothing useful to say in response to the point of law raised. They left it for the court to decide but directed their blame(s) to the Prison Authority for failing to prepare their notices according to the law.

We appreciate the point of law raised by Ms. Catherine, learned State Attorney.

Rule 68(2) of the Court of Appeal Rules, 2009 (the Rules) provides for matters which a notice of appeal must contain. The provision reads;

*"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 notice 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.”*

The requirements stated under Rule 68(2) of the Rules are clearly specified in form B of the First Schedule to the Rules, which according to sub rule (7) of Rule 68 of the Rules, a notice of appeal shall be substantially complied with. The sub rule provides as follows;

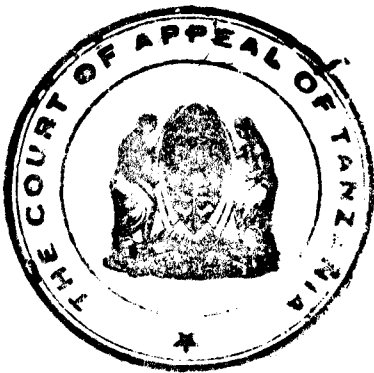
*“A notice of appeal shall be substantially in form B in the first schedule to the Rules and shall be signed by or on behalf of the appellant.”*

One of the requirements stated in Form B in the first schedule to the Rules is to indicate the date of judgment to be appealed against. This requirement has been emphasized by this Court in the case of **Nichontize s/o Rojeli v. R, Criminal Appeal No. 228 of 2013 [unreported]** which clearly stated that notice of appeal must indicate a correct date of the judgment to be appealed against.

Looking at the notice of appeal at hand, surely, there is variance of the dates of the decision of the High Court the subject to this appeal and that which appeared in the notices of appeal filed in this Court by the appellants. The record of appeal shows that the decision of the High Court was delivered on 8/9/2014, whereas the date of the decision of

this appeal indicated in the notices of appeal is 8/10/2014. Those are two different dates. The variance of dates as herein above stated renders the notices of appeal incurably defective. With these conspicuous defects in the notices of appeal, we totally agree with Ms. Catherine, learned State Attorney that the appellants notices of appeal are defective. For being defective, that renders the appeal before us to be incompetent. In the event of being incompetent, we are constrained to strike out the appeal as we hereby do. The appeal is accordingly struck out.

DATED at MBEYA this 8<sup>th</sup> 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.

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