

IN THE COURT OF APPEAL OF TANZANIA

AT MBEYA

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

CRIMINAL APPEAL NO. 271 OF 2010

TIZO WILLIAM APPELLANT

VERSUS

THE REPUBLIC RESPONDENT

(Appeal from the decision of the High Court of Tanzania

At Mbeya)

(Khaday, J.)

Dated 17th September, 2009

In

DC. Criminal Appeal No. 38 of 2009

RULING OF THE COURT

21th & 22nd April, 2016

MUGASHA, J.A.:

The appellant **TIZO WILLIAM** and one **TIMOTH AMPHREY** were convicted by the District Court of Sumbawanga of the offence of armed robbery contrary to section 287 A Penal Code [**CAP 16 RE. 2002**]. They were sentenced to imprisonment to a term of twenty (20) years. They appealed to the High Court in Criminal Appeal No. 38 of 2009 whereby **TIMOTH AMPHREY** was acquitted and the appellant's conviction and sentence

sustained, by Khaday J. on 17/09/2010. Further aggrieved, the appellant has preferred an appeal to this Court. Initially, the appellant, took initial steps to institute the appeal whereby on 20/9/2010, 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."*

[Emphasis supplied]

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 17/09/2010.

When the matter was called on for hearing, the Court '*suo motu*' required Ms. Mwajabu Tengeneza, learned State Attorney for the respondent Republic, to address the Court on the competence of the appeal filed pursuant to the Notice of Appeal lodged on 20/09/2010.

In her brief and precise oral submission, the learned State Attorney immediately pointed out that, the Notice of Appeal is defective as it does not indicate the nature of conviction and sentence and it lacks the date of

the Judgement sought on appeal. She urged the Court to strike out the appeal.

On the other hand, when the appellant was referred to the respective shortfalls in the Notice of Appeal, being a lay person he could not meaningfully make any response except to urge the Court to proceed with the hearing of the appeal because the blame is to be shouldered by the one who prepared the Notice of Appeal that is the Prison Officer.

It is now settled law that, in terms of rule 68(2) of the Rules, a Notice of Appeal must state the nature of conviction and sentence and the date of the decision or order sought to be appealed against. Since it is a Notice of Appeal which institutes an appeal, a Notice of Appeal which does not indicate the nature of conviction and sentence and the date of the decision sought for appeal cannot be said to have effectively instituted an appeal. **(SEE MBUKI JAMES KIRUMA VS REPUBLIC, CRIMINAL APPEAL NO. 163 OF 2012, MWANYA ALLY DAD @HAMISI MUSA MTONDOIMA VS REPUBLIC, CRIMINAL APPEAL NO. 105 OF 2013 and TANO MBIKA VS REPUBLIC, CRIMINAL APPEAL NO 200 OF 2013 (all unreported).**

In the matter under scrutiny, the purported Notice of Appeal at page 57 of the record does not indicate the nature of conviction and sentence and the date of the decision sought to be appealed against. This renders the Notice of Appeal defective. The aforesaid defects render the Notice of Appeal defective and it contravenes Rule 68(2) and (7) of the Rules .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, given the said defects, the purported appeal is incompetent and we accordingly strike it out.

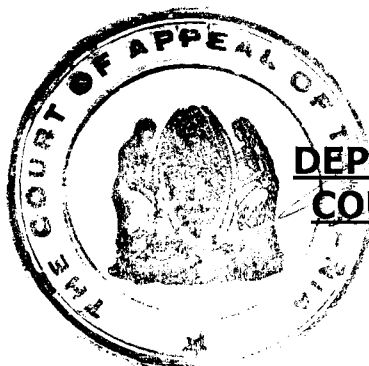
DATED at MBEYA this 21st day of April, 2016.

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