

IN THE COURT OF APPEAL OF TANZANIA
AT MBEYA
(CORAM: KIMARO, J.A., MUGASHA, J.A., And MZIRAY, J.A.)

CRIMINAL APPEAL NO. 247 OF 2015

1. SAULO MWAMDU @ KAMANDO
2. JOHN AMOS
3. VENANCE FARIALA **APPLICANTS**

VERSUS

THE REPUBLIC **RESPONDENT**

**(Application from the decision of the High Court of Tanzania
at Mbeya)**

(Sambo, J.)

**Dated the 29th day of April, 2015
in**

(DC) Criminal Appeal No. 38 of 2014

.....

RULING OF THE COURT

15th & 19th April, 2016

MZIRAY, J. A.:

The appellants were jointly charged and convicted in the Resident Magistrate's Court of Rukwa at Sumbawanga with the offences of Armed Robbery c/s 207A of the Penal Code, Cap 16 R.E. 2002. They were each sentenced to serve 30 years term in jail. The first appeal to the High Court was unsuccessful thus this second appeal. When this appeal came before us for hearing, the appellants appeared in person and were unrepresented.

The respondent/Republic was represented by Mr. Francis Rodgers, learned State Attorney.

The learned State Attorney challenged the competence of this appeal. He pressed us to strike it out as it was instituted by incurably defective notices of appeal. The learned State Attorney impressed upon us that the notices of appeal referred to wrong number of the case appealed against and that the same were not signed. He stated that earlier on, before the High Court, there were three cases, i.e. is Criminal Appeal Nos. 38, 39 and 40 which were all consolidated to be Criminal Case No. 38 of 2014. The learned State Attorney pointed out that the 1st appellant referred in his notice of appeal Criminal Appeal No. 39/2014 which in actual fact does not exist. Equally the same applies to the second appellant, who referred in his notice of appeal Criminal Appeal No. 40 of 2014 which also does not exist. Additionally, the second appellant cited the provision of section 130 of the Penal Code relating to rape as the provision against which he was convicted for. It was the learned State Attorney's strong contention that the second appellant has never been convicted for rape by any court, instead he was convicted for armed robbery c/s 287A of the Penal Code. In that case therefore, the second appellant cited wrong provision against which, he was convicted for. As for the third appellant's notice, the learned State Attorney

pointed out that the notice does not bear his signature. The third appellant did not insert his thumb print in the notice of appeal.

On that basis therefore, the learned State Attorney submitted that the notices of appeal filed by the appellants are defective for contravening the provision of section 68(2) of the Court of Appeal Rules, 2009 (the Rules). In the event, the learned State Attorney urged this Court in terms of section 4(2)(a) of the Rules to strike out the appeal. The appellants, being lay persons and unrepresented had, understandably, nothing useful to tell us. However, they shifted blame to the prison Authority.

We respectively agree with Mr. Francis Rodgers, learned State Attorney that it was mandatory for the appellants to sign and indicate in their notices the correct number of the cases from which they intended to appeal against. The requirement is provided for under Rule 68(2) and (7) of the Rules. Rule 68(2) provides as follows;

"68(1) ...

*(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 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 [Emphasis supplied].*

As to sub – rule 7 of Rule 68, the same 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."*

Clearly from its wording, sub-rule (7) of Rule 68 of the Rules is an imperative provision as far as substantial matters required to be contained in form B of the **First Schedule** to the rules are concerned. It means therefore that to a significant extent, a notice of appeal must contain the important matters required to be shown in that form. The number of the case whose decision is sought to be appealed against is one of those important matters. The reason is that the form specifically provides a space for filling such information. Other matters are the date of the decision intended to be appealed against, the name of the Judge who decided the case and the nature of conviction, sentence or finding against which the appellant intends to appeal.

Indeed, this is not the first time that the Court is considering the effect of a failure by an appellants to comply with the requirements of Rule 68(2) of the Rules. In the case of **Albanus Aloyce and Another v R**, Criminal Appeal No. 258 of 2014 (unreported), the appellants' notices of appeal did not comply with the requirements of Rule 68(2). One of the defects was that while they were appealing against the decision of the High Court in Criminal Appeal No. 133 of 2001, they indicated in their notices of appeal that they were appealing against Criminal Appeal No. 133 of 2002 thus, a wrong number of the case which they intended to appeal against citing among other previous decision, the case of **Nichontize s/o Rojeli v R, Criminal Appeal no, 228 of 2013** (unreported). The Court found that the appellants' notices of appeal were incurably defective thus rendering the appeal incompetent.

In the **Nichontinze case** (supra), the appellant failed to indicate in his notice of appeal the correct date of the judgment of the High Court from which they intend to appeal. Having considered its previous decisions on the subject including **Hamis s/o Yazidi and Another v R, Criminal Appeal No. 190 "B" of 2012** and **Kigoma Renald @ Rabani v R, Criminal Appeal No. 234 of 2015** (both unreported) the Court held that, failure to comply with the mandatory requirements of Rule 68(2) of the Rules renders

incompetent. The Court also mentioned the matters which a notice of appeal must contain so as to comply with that rule. It observed that in order to comply with Rule 68, the appellant must observe the following in his notice of appeal.

- (i) Indicate a correct date of the judgment intended to be appealed against.
 - (ii) Insert the name of the High Court judge and number of the case to be appealed.**
 - (iii) State briefly the nature of the acquittal, conviction, sentence, order or finding against which it desired to appeal.
- (Emphasize added).

In the present case as stated above, the first and second appellants did not insert in their notices of appeal the correct number of the case appealed against. Instead of inserting Criminal Appeal No. 38 of 2014 they inserted in their notices Criminal Cases Nos. 39/2014 and 40/2014. That was a defect. Apart from that, the second appellant wrongly cited the provision of section 130 of the Penal Code relating to the offence of rape, he was

never convicted of, while in fact he ought to have cited the provision of section 287A of the Penal Code, the provision he was convicted of.

As to the third appellant's notice the same was not signed as stated by the learned State Attorney to comply with Rule 68 (2) of the Rules. The pointed out defects renders the appellants' notices of appeal incurably defective and their intended appeal in therefore incompetent. On the basis of the above stated reasons, we find their appeal to be incompetent. In the event, the same is hereby struck out.

It is so ordered.

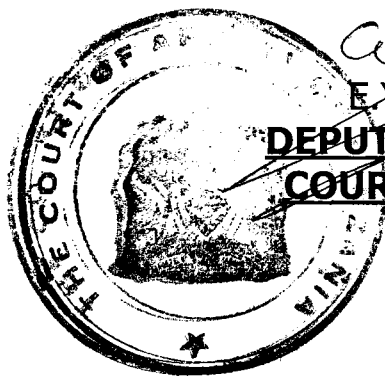

DATED at MBEYA this 18th day of April, 2016.

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