

IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

CORAM: KIMARO, J.A., MUSSA, J.A., AND MZIRAY, J.A.

CRIMINAL APPEAL NO. 84 OF 2015

MARWA KACHANG'AAPPELLANT

VERSUS

THE REPUBLIC.....RESPONDENT

**(Appeal from the decision of the High Court of Tanzania
at Dar Es Salaam)**

(Twaib, J.)

dated the 25th day of February, 2013

in

Criminal Appeal No. 25 of 2012.

RULING OF THE COURT

24th June, & 11th July, 2016

MZIRAY, J.A.:

Before the District Court of Ilala at Samora Avenue, the appellant and another person were charged with the offence of armed robbery c/s 287A of the Penal Code. It was alleged that, on 24th day of February, 2009 at about 20.30hrs at Kivule Kerezange area within Ilala District in Dar es Salaam Region did steal cash Tshs. 1,350,000/= the property of one Museven s/o Magige and immediately before and after such stealing did use a gun and an axe in order to obtain the sum of money mentioned.

At the end of the prosecution case, the appellant's co-accused was acquitted. After hearing the appellant's defence, he was convicted and sentenced to 30 years imprisonment. He unsuccessfully appealed to the High Court. Now, he has come to this Court on a second appeal. Before us, the appellant appeared in person. He was all set to argue his eleven grounds of appeal in his memorandum of appeal that he had earlier on filed. The respondent Republic was represented by Mr. Joseph Mango, Senior State Attorney assisted by Ms. Zawadi Mdegella, State Attorney.

At the commencement of hearing, Mr. Joseph Maugo, learned Senior State Attorney rose up and informed the Court that the Republic was opposing the appeal to be heard on ground that the notice of appeal at page 61 of the record of appeal has failed to comply with Rule 68 (2) and (7) and Rule 75 of the Court of Appeal Rules, 2009 by not mentioning correctly the name of the judge who made the decision in the first appeal before the High Court. He submitted that the name of the Judge appearing in the notice of appeal is Twaribu while in actual fact the correct name is supposed to be Twaib, the defect which renders the appeal defective hence liable to be struck out.

On his part, the appellant blamed the Prison Authority for preparing the defective notice. All the same, he urged the Court to consider his appeal as the defect was out of human error.

We have given due scrutiny of the notice of appeal, the gist of which is reproduced below:

*"**TAKE NOTICE** that, the above named appellant appeals to the Court of Appeal of Tanzania against the decision of the Honourable Justice Twaribu given at Dar es Salaam on the 25th day of February, 2013 whereby the appellant was convicted of armed robbery and sentenced to 30 years imprisonment...."*

We respectfully agree with Mr. Maugo, learned Senior State Attorney that the name of the judge appearing in the notice of Appeal is Twaribu instead of Twaib, the judge who presided over Criminal Appeal No. 25 of 2012, whose decision is subject to this appeal.

The law is clear and settled on this. Rule 68(2) provides as follows;

"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 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.

As to sub- rule (7) of Rule 68, the same provides as follows;

"(7) A notice of appeal shall be substantially in the 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/1 of the First Schedule to the Rule are concerned. It means therefore that a notice of appeal must contain the important matters required to be shown in that Form. The name of the Judge who decided the case is one of those important matters. Other matters are the date of the decision intended to be appealed against, the nature of conviction, sentence or findings 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 appellant to comply with the requirements of Rule 68(2) of the Rules. In the case of **Albanus Aloycee and Another v. The Republic, Criminal Appeal No. 258 of 2014** (Unreported), the appellants' notices of appeal did not comply with the requirements of Rule 68(2). Citing among other previous decisions, the case of **Nichontinze s/o Rojeli v. The Republic, Criminal Appeal No. 117 of 2014** (unreported), the Court found that the appellants' notices of appeal were incurably defective thus rendering the appeal incompetent.

In Nichonitenze case (supra), the appellant failed to indicate in his notice of appeal the correct date of the judgment of High Court from which he intended to appeal. Having considered the previous decisions including

the decision in **Hamis s/o Yazidi and Another v.R, Criminal Appeal No. 234 of 2013** (unreported), the Court held that, failure to comply with the mandatory requirements of Rule 68 (2) of the Rules renders a notice of appeal defective thereby causing the intended appeal to be incompetent. The Court also stated 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 of the Rules, the appellant must do the following in his notice of appeal.

- (i) *Indicate the 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 appended against.*
- (iii) *State briefly the nature of the acquittal, conviction, sentence, order or findings which it is desired to appeal. [Emphasis supplied].*

All said, in the present case, the appellant did not insert in his notice of appeal the true and correct name of the High Court judge who

presided over the case whose decision is appealed against. Instead of inserting the name of Twaib, J he slackly inserted Twaribu, J. That in itself renders his notice of appeal incurably defective and the intended appeal is therefore incompetent. For being incompetent we invoke Rule 4(2) (a) of the Rules and strike it out. It is so ordered.

DATED at DAR ES SALAAM this 29th day of June, 2016.

N.P. KIMARO
JUSTICE OF APPEAL

K.M. MUSSA
JUSTICE OF APPEAL

R.E.S. MZIRAY
JUSTICE OF APPEAL

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




E.F. FUSSI
DEPUTY REGISTRAR
COURT OF APPEAL