

**IN THE COURT OF APPEAL OF TANZANIA  
AT ARUSHA**

**CRIMINAL APPEAL NO. 39 OF 2015**

**IDDI JUMA @ NYERERE .....APPELLANT  
VERSUS**

**THE REPUBLIC .....RESPONDENT  
(Appeal from decision of the High Court of Tanzania  
at moshi)**

**(Munisi, J.)**

**Dated the 17<sup>th</sup> day of September, 2014**

**in**

**DC Criminal Appeal No. 43 of 2012**

**.....**

**RULING OF THE COURT**

18<sup>th</sup> & 20<sup>th</sup> May, 2016

**MMILLA, J.A.:**

The appellant, Iddi Juma @ Nyerere, was charge in the District Court of Same in Same District in the Region of Kilimanjaro with unnatural offence contrary to Section 154 (1) (d) of the Penal Code Cap, 16 of the Revised Edition, 2002 and was sentenced to 30 years imprisonment. He unsuccessfully appealed to the High Court of Tanzania at Moshi, hence this second appeal to this Court.

At the commencement of the hearing of the appeal, we were compelled to begin with a preliminary objection on a point of law raised by the respondent Republic vide a notice dated 16.5.2016. The lone ground thereof is that the appeal is incompetent for contravening the provisions of Rule 68 (1) , (2) and d (7) of the Tanzania Court of Appeal Rules, 2009 (the Rules).

In her submission in support of the preliminary objection, Ms. Tarsia Gervas, learned State Attorney who represented the respondent Republic, pointed out that the appellant's notice of appeal appearing on page 38 of the court record indicates that he was convicted of rape whereas the charge sheet appearing at page 1 of the court record shows that he was charged with unnatural offence contrary to Section 154 (1) (d) of the Penal Code. She also referred the Court to page 21, first paragraph of the court record, at which it is reflected that the appellant was convicted of unnatural offence. Ms Gervas submitted that the defect offends the provisions of Rule 68 (2) which prescribes the important information to be shown in the notice of appeal, of which the nature of conviction is one. She asserted that since the defect is fatal, the notice of appeal

is incompetent, thus rendering the appeal itself incompetent in that the notice of appeal institutes the appeal in terms of sub-rule (1) of Rule 68 of the Rules. She urged the Court to strike out the appeal. She also relied on the cases of **Rashid Makorani v. Republic**, Criminal Appeal No. 265 of 2014, CAT, and **Peter Shangwe v. Republic**, Criminal Appeal No. 354 of 2008.

On his part, the appellant, who is a layman, admitted that he was undisputedly charged with and convicted of unnatural offence contrary to Section 154 (1) (d) of the Penal Code and not rape as he indicated in his notice of appeal.

It is beyond controversy that that the appellant has indicated in the notice of appeal appearing at page 38 of the court record that he was convicted of rape, and has admitted this fact in his submission before us.

As correctly submitted by Ms Gervas, Rule 68 (2) of the Rules prescribe the requisite information to be scribed in the notice of appeal. That Rule provides that:-

*"(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 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."*

It attracts no controversy that failure to state the correct offence in the notice of appeal under which the conviction and sentence were predicated offends the provisions of this Rule. So also sub - Rule (7) of Rule 68 of the Rules which, as correctly submitted by Ms Gervas, requires the notice of appeal to be substantially in the Form B in the First Schedule to the Rules. The essential details in Form B (supra) required to be captured in the notice of appeal include the date of the challenged judgment, the name of the trial or appellate judge, the trial or appellate court and the correct registration number of the case or appeal in the lower court, the nature of conviction, sentence, or finding against which he desires to appeal. ***Ipsa jure***, these details are in conformity with those enacted under Rule 68 (2) of the

Rules – See also the cases of **Elia Masena Kachala & 2 Others v. Republic**, Criminal Appeal No. 156 of 2012, CAT, **Daud Mwampamba v. Republic**, and **John Petro v Republic**, Criminal Appeal No. 130 of 2010, CAT (all unreported), to mention some.

In **John Petro v. Republic**, the Court underscored that:-

*" It is now settled law that under the said Rule 61 (2) [now Rule 68 (2) of the Rules] it was a mandatory requirement for the notice of appeal to state the nature of the conviction, sentence, order, or finding of the High Court against which it is desired to appeal. Failure to do so rendered, and still renders under the 2009 Court Rules, the purported appeal incompetent."*

Undisputedly, as perceived above, the requirement for the notice of appeal to state the nature of the conviction and sentence sought to be appealed against is a mandatory requirement under this Rule. Consequently, where it may not be so stated, then the notice of appeal is fatally defective.

Since it is the notice of appeal which institutes the appeal in terms of Rule 68 (1) of the Rules, a fatally defective notice of appeal, as we have found it to be in our present case, renders the appeal incompetent, thus liable to be struck out. In the circumstances, we do not hesitate to, and we hereby strike out the appeal as prayed by Ms Gervas.

Order accordingly.

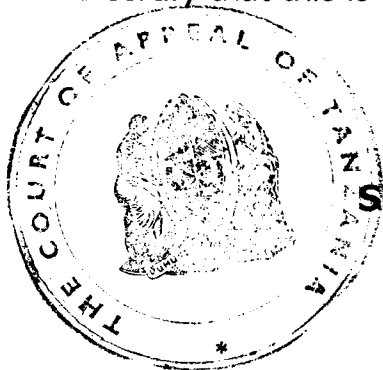
**DATED** at **ARUSHA** this 19<sup>th</sup> day of May, 2016.


N.P. KIMARO  
**JUSTICE OF APPEAL**

B.M.K. MMILLA  
**JUSTICE OF APPEAL**

R.E.S. MZIRAY  
**JUSTICE OF APPEAL**

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



  
P.W. BAMPIKYA  
**SENIOR DEPUTY REGISTRAR**  
**COURT OF APPEAL**