

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

**(CORAM: MUSSA, J.A. MUGASHA, J.A. And MWAMBEGELE, J.A.)**

**CRIMINAL APPEAL NO. 476 OF 2015**

**THE REPUBLIC ..... APPELLANT**

**VERSUS**

<b>1. JEREMIAH JOHN 2. REVELIAN KAGYA 3. MASUMBUKO PAULO 4. JAMES MAJURA 5. ANGELO BURCHARD</b>	}	<b>..... RESPONDENTS</b>
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**(Appeal from the decision of the High Court of Tanzania at Bukoba)**

**(Matogolo, J.)**

**Dated the 2<sup>nd</sup> day of October, 2015**

**In**

**Criminal Session No. 54 of 2009**

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**RULING OF THE COURT**

27<sup>th</sup> November & 4<sup>th</sup> December, 2017

**MUGASHA, J.A.:**

In the High Court of Tanzania, at Bukoba, the respondents were charged with murder contrary to section 196 of the Penal Code, CAP 16 R.E. 2002. The respondents were alleged to have murdered one Abel s/o John on 24<sup>th</sup> May, 2006 at Kyaruhuza Kaisho Village within Karagwe District, Kagera region.

The respondents denied the charge following which a full trial was conducted and they were acquitted having been not found guilty of murder. Aggrieved, the appellant lodged a notice of appeal intending to challenge the acquittal of the respondents and subsequently lodged the present appeal. However, the appeal was confronted by a preliminary objection on the following point of law:

*" THAT, the appeal is improperly before this Court for want of legal notice of appeal which has incorrectly referred the trial judge as either Justice Matogolo or Matogoro respectively."*

In addition, we required the parties to address us on the propriety of the notice of appeal which lacks the nature of acquittal or order or finding desired to be appealed against as required by Rule 68(2) of the Tanzania Court of Appeal Rules, 2009 (the Rules).

The appellant was represented by Mr. Athumani Matuma, learned Senior State Attorney assisted by Mr. Nestory Nchimani, learned State Attorney. The 1<sup>st</sup>, 2<sup>nd</sup> 3<sup>rd</sup> and 5<sup>th</sup> respondents were represented by Mr. Ally Chamani, learned counsel. Mr. Josephat Rweyemamu, learned counsel, represented the 4<sup>th</sup> respondent.

In his brief account on the preliminary point of objection Mr. Chamani submitted that the notice of appeal incorrectly refers the trial Judge as Mr. Matogoro who is not among the judges of the High Court of Tanzania. He argued that, such notice of appeal is defective for not being in substantial compliance with Rule 68 (7) of the Rules. He added that, since it is the notice of appeal which institutes a criminal appeal, given the defective notice of appeal, the appeal is incompetent and deserves to be struck out. To support this proposition, he referred us to the case of **MARWA KACHANGA vs REPUBLIC**, Criminal Appeal No. 84 of 2015 (unreported) where the Court underscored that stating the correct name of the trial Judge in the notice of appeal is among components constituting substantial compliance of the prescribed Form B under Rule 68(7) of the Rules.

Mr. Rweyemamu supported Mr. Chamani's submission. However, both learned counsel for the respondents did not make any submission in respect of the notice of appeal not stating the nature of acquittal as raised by the Court.

On the other hand, the learned Senior State Attorney argued that, the omission to include the correct name of the trial judge did not vitiate the appeal because the notice of appeal has to be looked at in its entirety.

He referred us to the case of **JOSEPH STEVEN GWAZA vs THE REPUBLIC**, Criminal Appeal No. 393 of 2015 (unreported), where the Court concluded that, the omission to insert a letter in the name of the trial judge did not vitiate the notice of appeal.

Regarding the lacking nature of acquittal in the notice of appeal, apart from conceding to the defect, Mr. Matuma pleaded with us to invoke Rule 111 and grant the appellant leave to amend the notice of appeal. When it was brought to his attention that, Rule 111 of the Rules, is applicable in civil matters, he rested the fate of the matter to the Court.

After a careful consideration of the submissions of learned counsel, the point for determination is whether the notice of appeal is valid.

We consider prefacing our discussion by restating the dictates of Rule 68(2) of the Rules which categorically states as follows:

***" 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”.*

[Emphasis supplied]

In terms of the above cited Rule, it is mandatory for every notice of appeal to briefly state the nature of acquittal, conviction, sentence, order or finding against which the appeal is desired. Where these aspects or any of them is missing the notice of appeal will be fatally defective. [See **JOHN IKLAND @ AYOUB V THE REPUBLIC**, Criminal Appeal No. 196 of 214 (unreported)]. In numerous decisions, the Court has emphasized the requirement of complying with Rule 68 of the Rules. For example, **NICHONTIZE S/O ROJELI VS REPUBLIC**, Criminal Appeal No. 177 of 2014, **MWANYA ALLY DADI@ HAMISI MUSSA MTONDOIMA VS REPUBLIC**, Criminal Appeal No. 105 of 2013 and **MAJID GOA VEDASTUS VS REPUBLIC**, Criminal Appeal No. 268 of 2006 (all unreported). In the case of **NICHONTIZE S/O ROJELI VS REPUBLIC** (supra) we said, the notice of appeal must state: the name of the High Court Judge and the number of the case to be appealed against and the nature of the acquittal, conviction, sentence, order or finding against which it is desired to appeal. Moreover, Rule 68 (7) of the Rules mandatorily requires the notice of appeal to be substantially in the

Form B in the First Schedule to the Rules and shall be signed by or on behalf of the appellant.

We have carefully scrutinized the notice of appeal filed by the appellant which is at page 205 of the record. It reads as follows:

**"NOTICE OF INTENTION TO APPEAL**

(Made under Rule 68 of the Court of Appeal Rules, 2009)

***TAKE NOTICE** that, the Republic appeals to the Court of Appeal of Tanzania against the decision of the Honourable Mr. Justice Matogoro, J. given at the High Court of Tanzania at Bukoba on the 2<sup>nd</sup> day of October, 2015 whereby all the Respondents were acquitted. The appeal is against the acquittal. The appellant intends to be present at the hearing of the appeal..."*

Apart from the appellant opting not to rely on the format prescribed in Form B in the First Schedule to the Rules which is quite absurd, the notice of appeal is deficient of the mandatory requirements of Rule 68(2) of the Rules for not stating the correct name of the trial Judge and the nature of acquittal, order or finding against which it is desired to appeal. The cumulative effect of pointed out defects render the notice of appeal defective. Since the notice of appeal is invalid, it cannot institute the

appeal. As it is the notice of appeal which institutes an appeal in criminal appeals, the appeal before us is incompetent. In the same vein, we are entirely not in agreement with Mr. Matuma that Rule 111 of the Rules can be invoked to salvage the defective notice by making an order to amend it. We say so because; Rule 111 of the Rules is a remedy available in civil appeals instituted by a memorandum of appeal as opposed to criminal appeals instituted by the notice of appeal. Thus, from the beginning, the invalid notice of appeal lodged instituted no appeal.

We wish to reiterate that, it is prudent to prepare a notice of appeal in a manner set out in the prescribed Form B as spelt out under Rule 68 (7) of the Rules whereby the basic intention is to perpetuate certainty and consistency regarding procedure and to maintain uniformity in the application of the Rule. (See **MWANYA ALLY DADI@ HAMISI MUSSA MTONDOIMA VS REPUBLIC** (supra).

In view of the aforesaid fatal defects ranging from not stating the nature of acquittal sought on appeal and the correct name of the trial Judge, we are satisfied that the purported appeal before us is incompetent and is hereby struck out.

Finally, we deem it pertinent to remind the Director of Public Prosecutions (DPP) when exercising its right of appeal to bear in mind and comply with the mandatory dictates of section 6(2) of the Appellate Jurisdiction Act [**CAP 141 RE.2002**]. This provision gives the statutory right of appeal to no other person than the DPP if dissatisfied with any acquittal, sentence or order passed by the High Court or by a subordinate court exercising extended powers.

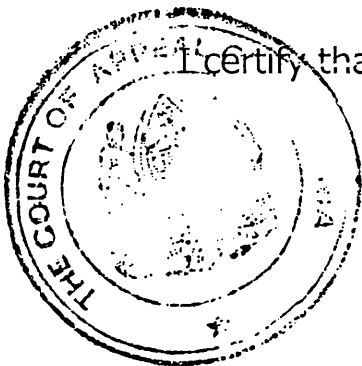
**DATED** at **BUKOBA** this 30<sup>th</sup> day of November, 2017.


K. M. MUSSA  
**JUSTICE OF APPEAL**

S.E.A. MUGASHA  
**JUSTICE OF APPEAL**

J.C.M. MWAMBÈGELE  
**JUSTICE OF APPEAL**

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



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