

IN THE COURT OF APPEAL OF TANZANIA

AT BUKOBA

(CORAM: MBAROUK, J.A., MKUYE, J.A. And WAMBALI, J.A.)

CRIMINAL APPEAL NO. 115 OF 2018

1. DELIFIUS MAXMILLIAN @ DERICK
2. HAMADI MABARAZA
3. DASTAN FULGENCE

}APPELLANTS

VERSUS

THE REPUBLIC..... RESPONDENT

**(Appeal from the decision of the High Court of Tanzania at
Bukoba**

(Bongole,J.)

dated the 16th day of June, 2017

in

Criminal Appeal No. 63 of 2016).

RULING OF THE COURT

30th & 31st August, 2018

MBAROUK, J.A.:

When the appeal was called on for hearing, it transpired that Mr. Nestory Paschal Nchimani, State Attorney had earlier on 27th August, 2018 filed a notice of preliminary objection to the following effect:-

- "1. The appeal before the Court is incompetent, for failure to indicate the nature of conviction in the Notice of Appeal.*
- 2. The Appeal before the Court is incompetent, for being brought against the interlocutory order of the High Court."*

In this appeal, Ms. Jacqueline Evaristus Mrema, learned advocate, represented the appellant, whereas Mr. Nestory Paschal Nchimani, learned State Attorney represented the respondent / Republic.

Ms. Mrema readily conceded to both objections raised by the learned State Attorney. Basically she agreed that the notice of appeal lodged by the appellant has failed to state the nature of the finding against which it is desired to be appeal against as required by Rule 68(2) of the Tanzania Court of Appeal Rules, 2009 (the Rules). She therefore urged us to find the notice of appeal defective and the appeal

incompetent. For that reason, she prayed for the appeal to be struck out.

On his part, after the learned advocate for the appellant readily conceded to the preliminary points of objection, Mr. Nchimman prayed for the appeal to be struck out. He further prayed to withdraw his 2nd preliminary point of objection, because the 1st preliminary objection alone could dispose of the matter, taking into account that under Rule 68 (1) of the Rules it is the notice of appeal which institutes an appeal.

In its various decisions, this Court has emphasized the requirement to comply with Rule 68 of the Rules, to which the same reads as follows:-

" 68.-(1) Any person who desires to appeal to the Court shall give notice in writing, which shall be lodged in triplicate with the Registrar of the High

Court at the place where the decision against which it is desired to appeal was given, within thirty days of the date of that decision, and the notice of appeal shall institute the appeal.

- (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.*

3)N/A

4)N/A

- 5)N/A
- 6)N/A
- 7)N/A.”

It is therefore necessary for the appellant to consider the requirement to indicate in his / her notice of appeal the matters stated in Rule 68(2) of the Rules. This Court in the case of **Nichontinze s/o Rojeli v. Republic**, Criminal Appeal No. 117 of 2014 elaborated on the matters to be contained in the notice of appeal as follow:-

- "1) Indicate a correct date of the judgment intended to be appealed against;*
- 2) Insert the name of the High Court judge and number of the case to be appealed against;*
- 3) **State briefly the nature of the acquittal, conviction, sentence, order or finding against which it is desired to appeal.**"*

(Emphasis added).

Non-compliance with those mandatory requirements of Rule 68(2) of the Rules renders a notice of appeal defective and an appeal incompetent.

So as to appreciate what has transpired in the notice of appeal in this appeal, we have found it prudent to reproduce the said notice of appeal to which it has failed to state the nature of the finding of the High Court decision sought to be appealed against. The same appears as follows:-

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

CRIMINAL APPEAL NO. 115 OF 2018

- 1. DELIFINUS MAXMILLIAN @ DERICK.....1ST APPELLANT**
- 2. HAMADI MABARAZA..... 2ND APPELLANT**
- 3. DASTAN FULGENCE.....3RD APPELLANT**

VERSUS

THE REPUBLIC..... RESPONDENT

(Appeal from the judgment of the High Court of Tanzania at BUKOBA

[Honourable Judge S. B. Bongole,J.] dated 16.6.2017 in

Criminal Appeal No. 63 of 2016).

NOTICE OF APPEAL

TAKE NOTICE that **DELIFINUS s/o MAXMILIAN @ DERICK, HAMADI s/o MABARAZA and DASTAN s/o FRUGENCE** being dissatisfied with the decision of Honourable Judge S. B. Bongole, J. given at Bukoba on the 16th day of June 2017, appeals to the Court of Appeal of Tanzania against the whole of the said decision as decided.

The appellants intends to be present at the hearing of the appeal.

The address for service of the appellants is:

*DELIFINUS MAXMILLIAN, HAMADI MABARAZA and DASTAN FRUGENCE,
P.O. BOX 451,
BUKOBA.*

*It is intended to serve copies of this Notice to:
ATTORNEY GENERAL'S CHAMBERS
P.O. BOX 992,
BUKOB.*

Dated this 19th day of June, 2017.

*Signed1st Appellant, signed2nd Appellant, Signed..... 3rd Appellant
To: the registrar of the high Court of Tanzania at Bukoba
Lodged in the High Court of Tanzania at Bukoba on 19th day of June, 2017.*

*.....
REGISTRAR."*

There is no doubt that, in the above cited notice of appeal the nature of the finding of the High Court sought to be appealed against was not stated. Pointing out the consequences of the defect found in the notice of appeal this Court in the case of **Ramadhani Rashid v. Republic**, Criminal Appeal No. 22 of 2008 (unreported) where the decision of **Abeid s/o Seif v. Republic**, Criminal Appeal No. 228 of 2013 (unreported) was cited with approval, it was stated as follows:-

*" it is now well settled that
it is imperative 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. Such is the mandatory requirement comprised under Rule 68(2) of the Tanzania Court of Appeal Rules, 2009. (Emphasis added).

There is no doubt that in the instant appeal, the notice of appeal has failed to state the nature of the finding of the High Court sought to be appealed against. It is now a trite law according to the decisions of this Court that the consequences of such a defect is to render the notice of appeal defective and appeal incompetent as the mandatory requirement under Rule 68(2) of the Rules has been offended. Taking into account that in Criminal Appeals under Rule 68(1) of the Rules it is the notice of appeal which institutes an appeal, and as we

have found that the same is defective, we find the appeal incompetent and hereby strike it out. It is so ordered.


DATED at **BUKOBA** this 31st day of August, 2018.

M. S. MBAROUK
JUSTICE OF APPEAL

R. K. MKUYE
JUSTICE OF APPEAL

F. L. K. WAMBALI
JUSTICE OF APPEAL

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


E. Y. MKWIZU
SENIOR DEPUTY REGISTRAR
COURT OF APPEAL

