

**IN THE COURT OF APPEAL OF TANZANIA**

**AT ZANZIBAR**

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

**CRIMINAL APPEAL NO. 80 OF 2018**

**DIRECTOR OF PUBLIC PROSECUTIONS.....APPELLANT**

**VERSUS**

**1. SALIM SHARIF IBRAHIM  
2. PANYA SAID ALI  
3. YUSSUF DANIEL YUSSUF** } .....**RESPONDENTS**

**(Appeal from the ruling and order of the High Court of Zanzibar  
at Vuga)**

**(Sepetu, J.)**

**dated the 1<sup>st</sup> day of November, 2017**

**in**

**Criminal Case No. 11 of 2016**

**RULING OF THE COURT**

4<sup>th</sup> & 14<sup>th</sup> December, 2018

**WAMBALI, J.A.:**

The Director of Public Prosecutions consented under section 10 (2) of the Office of the Director of Prosecutions Act No. 02 of 2010 and section 35 of the Zanzibar Anti-corruption and Economic Crimes Act, 2012 (No. 1 of 2012) to the prosecution of the respondents namely Silima Sharifu Ibrahim (on two offences of

bribing agents), Panya Said Ali (on the offences of Obstructing Persons and Abetment) and Yussuf Daniel Yussuf (on the offence of Abetment).

After the information was lodged in the High Court of Zanzibar on 18<sup>th</sup> October, 2016, the respondents appeared to face their respective charges. According to the record of appeal, trial proceeded before Mkusa, J who heard one witness (PW1). However, on 1<sup>st</sup> November, 2017 when PW2 started to testify and wanted to tender a form which he prepared, the defence counsel, Mr. Rajab Abdalla Rajab objected and urged the court not treat that document as part of the case as the accused (respondents) were supposed to be given a complete copy of the file under section 225(1) and (2) of the Criminal Procedure Act, No. 7 of 2004.

On the other hand, Mr. Khamis Juma, learned State Attorney who appeared for the Director of Public Prosecutions, opposed the argument and request of Mr. Rajab for the respondents and urged the High Court to find the same baseless and proceed with the hearing.

In his rejoinder, Mr. Rajab was content of what he had urged the High Court in his earlier submission.

The learned trial judge thus made the following remarks:

*"Court: Indeed prosecution has different documents from what defence advocate have and this court. Therefore we will continue with what has been given to us at earlier stage".*

It is not in doubt that subsequently after that direction by the trial judge, Mr. Juma, learned State Attorney informed the trial judge that the prosecution wanted to appeal. The notice of appeal was thus lodged on 23<sup>rd</sup> November, 2017. However, up to the date of hearing of the appeal, the Director of Public Prosecutions had not lodged the Memorandum of Appeal as required by the law.

At the hearing of the appeal, Mr. Khamis Salum Khamis, learned State Attorney assisted by Mr. Hassan Ali Mohamed and Ms. Asia Ibrahim Mohamed both learned State Attorneys appeared for the appellant Director of Public Prosecutions while Mr. Rajab Abdalla Rajab appeared for the respondents.

Before the hearing proceeded, we requested the counsel to comment on whether the appeal is properly before the Court in view of the defects contained in the notice of appeal.

On his part, Mr. Khamis, learned State Attorney firmly submitted that the notice of appeal is not defective as it is against the ruling and order of the trial judge issued on 1<sup>st</sup> November 2017. He submitted further that the appellant is only required to state briefly in the notice of appeal the nature of the order or ruling or judgment of the trial court. He, therefore, urged the Court to find the notice of appeal to be competent and hear the appeal.

On the other hand, Mr. Rajab, learned advocate for the respondents was of the firm opinion that the notice of appeal is defective and it does not correspond with what the High Court directed on 1<sup>st</sup> November, 2017. He, thus, urged us to find that as the notice of appeal which institutes the appeal does not comply with the provisions of Rule 68 (2) of the Tanzania Court of Appeal Rules, 2009 (the Rules), the same is defective and therefore incompetent with the result that the same should be struck out.

Having heard the arguments of the counsel for the parties on the propriety of the notice of appeal, we deem it appropriate to reproduce the relevant part of the said notice hereunder:

*"(Appeal from the ruling and order of the High Court of Zanzibar at Vuga (Mr Justice Mkusa I. Sepetu). Dated 1 November 2017 in Criminal Case number 11 of 2016)*

**NOTICE OF APPEAL**

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

*TAKE NOTICE that the Director of Public Prosecutions appeals to the Court of Appeal of Tanzania against the ruling and order of the Honourable Mr. Justice Mkusa I. Sepetu given at Vuga on the 1<sup>st</sup> day of November 2017 whereby the learnt (sic) Justice sustained the argument of the respondents to the effect that the record of evidence given to them was incomplete hence not compatible with the original record and the order to proceed with trial without regarding the same.*

*This appeal is against the ruling and order only”.*

It follows that, a reading of the above quoted part of the notice of appeal, leaves no one in no doubt that apart from the failure of the appellant to properly cite the provisions of Rule 68(1) of the Rules to move the Court, what is stated briefly in the said notice as being the substance of what the trial judge stated is substantially different from the above quoted observation and directions of the trial judge on 1<sup>st</sup> November, 2017.

In this regard, we are of the considered view that although the learned trial judge did not specifically state that his direction on 1<sup>st</sup> November, 2017 was a ruling or order, we have no hesitation to find that the description of what is contained in the notice of appeal does not correspond with what the judge observed and directed on 1<sup>st</sup> November, 2017.

It is important to emphasize that the requirement to state properly the substance of the nature of the order or finding sought to be appealed against is mandatory to enable the Court determine the appeal fairly based on what the High Court decided.

In the event, in view of the reasons we have stated above, we find the notice of appeal which institutes the appeal to be defective and incompetent for failure to comply with the provisions of Rule 68 (1) and (2) of the Rules. We, therefore, strike it out. It is so ordered.

**DATED at ZANZIBAR** this 13<sup>th</sup> day of December, 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.



  
B. A. MPEPO  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**