

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

(CORAM: MBAROUK, J.A., NDIKA, J.A., And MWAMBEGELE, J.A.)

CRIMINAL APPEAL NO. 249 OF 2016

RASHIDI SAID MASUMAI APPELLANT

VERSUS

THE REPUBLIC RESPONDENT

(Appeal from the Judgment of the High Court of Tanzania at Moshi)

(Munisi, J.)

dated the 22nd day of May, 2014

in

DC Criminal Appeal No. 28 of 2011

.....

RULING OF THE COURT

4th & 10th July, 2018

MBAROUK, J. A.:

This Criminal Appeal is derived from the decision of the High Court of Tanzania at Moshi in Criminal Appeal No. 57 of 2015 dated 16th May 2016 which originated from the District Court of Same at Same in Criminal case No. 214 of 2013, where the appellant was convicted of the offence of rape contrary to sections 130 (1)(2)(e) and 131 (1) of the Penal Code, Cap. 16 R.E. 2002. After the trial District Court convicted the appellant it sentenced him to thirty

(30) years imprisonment. Dissatisfied, the appellant unsuccessfully appealed to the High Court of Tanzania at Moshi, hence the appellant has preferred this second appeal.

When the appeal was called on for hearing, it transpired that there was a notice of preliminary objection filed by Ms. Alice Mtenga, the State Attorney on 27-06-2018 to the effect that the appeal is incompetent for contravening Rule 68(1)(2) and (7) of the Tanzania Court of Appeal Rules, 2009 (the Rules).

At the hearing, the appellant appeared in person, unrepresented, whereas the respondent/Republic was represented by Ms. Alice Mtenga, learned State Attorney.

Arguing in support of her preliminary objection, Ms. Mtenga submitted that in the notice of appeal found at page 46 of the record of appeal, there is a defect that, the appellant stated that he was convicted of rape and sentenced to **life imprisonment** while it was not the case, because the record shows that he was sentenced to thirty (30) years by the trial court and that sentence was confirmed by the High Court. She said, that defect in the notice of appeal renders the appeal incompetent. She added that

under Rule 68(1) of the Rules, it is the notice of appeal which institutes an appeal. Whereas, she further submitted that under Rule 68(2) of the Rules there are factors to be considered when the appellant lodges his notice of appeal, failure to consider those factors renders the notice of appeal incompetent.

This Court in the case of **Nichontinze s/o Rojeli Versus The Republic**. Criminal Appeal, No, 177 of 2014 (unreported) expounded those factors stated in Rule 68(2) of the Rules as follows:-

"The notice of appeal must contain the following:-

- 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 finding against which it is desired to appeal."*

(Emphasis added).

She ended her submission by urging us to find the notice of appeal defective and find the appeal incompetent. For being incompetent, Ms. Mtenga prayed for the appeal to be struck out.

On his part, the appellant submitted that the defect found in the notice of appeal was a result of being misled by a statement given to him by the District Registrar Moshi who read to him the decision of the High Court. He said, after filing his notice of appeal six months later, the prison officers told him that he was sentenced to thirty (30) years imprisonment and not life imprisonment. However he later conceded to the defect raised by the Court.

A plethora of decisions of this Court have emphasized the compliance of the mandatory requirements stated under Rule 68 (2) of the Rules. In the instant appeal, the appellant has failed to state the correct sentence imposed on him by the trial court which was confirmed by the High Court. Instead of stating that he was sentenced to 30 years imprisonment he stated in his notice of appeal that he was sentenced to life imprisonment. That surely is a defect which renders the notice of appeal defective and the

appeal incompetent. For instance, See **Abanus Aloyce and Marco Ibrahim Versus the Republic**, Criminal Appeal No. 258 of 2014, **Kagoma Renald @ Rabani and Another Versus The Republic**, Criminal Appeal No. 234 of 2013 (both unreported) to name a few.

As in criminal appeals it is a notice of appeal which institutes an appeal as per Rule 68 (1) of the Rules, and as in the instant appeal the notice of appeal is defective, we find the appeal incompetent. For being incompetent, we hereby strike it out. It is so ordered.

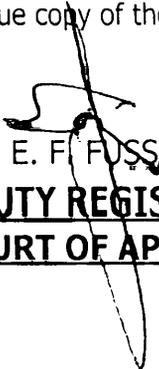
DATED at **ARUSHA** this 6th day of July, 2018.

M. S. MBAROUK
JUSTICE OF APPEAL

G. A.M NDIKA
JUSTICE OF APPEAL

J. C. M. MWAMBEGELE
JUSTICE OF APPEAL

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


E. F. FUSSI
DEPUTY REGISTRAR
COURT OF APPEAL