

**IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM**

CORAM: MBAROUK, J.A., MZIRAY J.A., And MKUYE, J.A.

CRIMINAL APPEAL NO. 81 OF 2016

1. MERKIZEDECK LUAMBANO 2. AMOS S/O LUTUMO 3. TITO S/O SANGA 4. GIDION S/O SANGA	} APPELLANTS
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VERSUS

THE REPUBLICRESPONDENT

**(Appeal from the decision of the High Court of Tanzania
at Dar es Salaam)**

(Ihema, J.)

Dated 17th day of June, 2002

in

HC. PC. Criminal Appeal No. 16 of 1999

RULING OF THE COURT

5th & 12th February, 2018

MBAROUK, J.A.:

When the appeal was called on for hearing, the Court wanted to satisfy itself as to whether the appeal is properly before it. This was for the reason that, the record shows that on 20th March, 2009, this Court struck out the appellants appeal in Criminal Appeal No. 89 of 2006 for being incompetent after

having failed to comply with the provisions of section 6(7) (b) of the Appellate Jurisdiction Act [Cap 141 R.E. 2002] (the AJA).

The genesis to this appeal is as follows; all the four appellants were convicted by the Mlimba Primary Court, Kilombero District of the offence of robbery with violence, contrary to sections 285 and 286 of the Penal Code. Each one of them was sentenced to fifteen (15) years imprisonment. Their appeals to the Kilombero District Court were un-successful so were their appeals before the High Court of Tanzania at Dar es Salaam in PC Criminal Appeal No. 16 of 1999 where their sentence was enhanced to thirty (30) years imprisonment. Their appeal to this Court in Criminal Appeal No. 89 of 2006 was struck out for being incompetent having not obtained a certificate on a point of law as provided by section 6(7) (b) of the AJA.

Thereafter, the appellants applied for leave to appeal to the Court of Appeal in Misc. Criminal Application No. 15 of 2009

and the High Court granted them leave to appeal to the Court of Appeal and certified that points of law were involved.

However, it has to be taken into account that, after this Court struck out the appeal in Criminal Appeal No. 89 of 2006, on 20th March, 2006, the appellants were required to file an application before the High Court seeking for extension of time to file their notice of appeal. See **William Shija v. Fortunatus Masha** [1997] TLR 213 (CA) at page 216.

In this appeal, the appellants appeared in person, unrepresented, whereas the respondent/Republic was represented by Ms. Christine Joas and Ms. Jenipher Masue both learned State Attorneys.

After the Court explained the anomaly found on record, generally all the appellants agreed to the anomaly raised by the Court *suo motu*, but prayed for their appeal to be allowed to proceed to be heard, as it has taken a long time to fight for their right to appeal to this Court, but on several occasions they

have failed to be heard for one or another reason. They further informed the Court that they are left with only one year to complete their imprisonment term, hence they urged the Court to consider the circumstances in this case and allow their appeal to proceed for hearing.

On her part, Ms. Jenipher agreed that the appeal is incompetent for failure to have a competent notice of appeal after the appellants appeal in Criminal Appeal No. 89 of 2006 was struck out. She added that, as there is no competent notice of appeal as required by Rule 68 (1) of the Court of Appeal Rules, 2009 (the Rules), hence the appeal deserves to be struck out. She therefore prayed for the Court to invoke Rule 4(2) (a) of the Rules and strike out the appeal.

The position as it stands now is that, the appellants only have obtained the certificate on the point of law pursuant to the provisions of section 6(7) (b) of the AJA in the ruling of the High Court Misc. Criminal Application No. 15 of 2009. However, they

have not yet obtained an extension of time to file their notice of appeal after their earlier appeal in Criminal Appeal No. 89 of 2006 was struck out.

Similar situation occurred in a case of **William Shija** (supra) where this Court held as follows:-

*"With respect, we are in agreement with Mr. Mwale that **when Civil Appeal No. 43 of 1996 was struck out, the notice of appeal was also struck out. In that situation, it is our view that if it is still so desired to appeal, a fresh application has to be filed in the High Court seeking extension of time in which to give notice of appeal. In case of Arusha International Conference Centre v. Damas Augustine Ndemasi Kavishe (supra) this Court had occasion to consider the effect of striking out an appeal. In that case it was stated: 'The application***

for extension of time to file the memorandum and record of appeal presupposes that there is already a notice of appeal in existence. But the notice of appeal which brought into being the appeal which has just been struck out, disappeared with striking out of that appeal.”[Emphasis added].

We have considered the complaint raised by the appellants that this is a very long time case and they have made several attempts to rescue the situation so that their appeal is to be heard and that they are left with only one year to complete to serve their sentences, but as the requirement to file extension of time has not been complied with, after their first appeal was struck out in Criminal Appeal No. 89 of 2006 on 20th March, 2009, that means even their notice of appeal filed earlier on was struck out.

As it is well known that in terms of Rule 68 (1) of the Rules in Criminal matters, it is a notice of appeal which institutes

an appeal. Without a valid notice of appeal, there is no valid appeal.

For the reason stated herein above, we are constrained to find the appeal incompetent, hence, we strike it out.


DATED at **DAR ES SALAAM** this 8th day of February, 2018.

M. S. MBAROUK
JUSTICE OF APPEAL

R. E. S. MZIRAY
JUSTICE OF APPEAL

R. K. MKUYE
JUSTICE OF APPEAL

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


E.Y. MKWIZU
DEPUTY REGISTRAR
COURT OF APPEAL