

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

CRIMINAL APPEAL NO 32 OF 2018

*(Originating from Resident Magistrate Court of Arusha at Arusha,
Preliminary Inquiry No. 60 of 2014)*

**1. JAFARI HASHIM LEMA
2. ABDUL MOHAMED HUMUDI
@ WAGOBA**

.....APPELLANTS

VERSUS

REPUBLIC.....RESPONDENT

RULING

S. M. MAGHIMBI, J:

The identified defects on the notice, by the respondent, are valid. The number of case referred in the notice are different from the petition. The appellants argued that the notice refers to different number of cases, the appeal before me being one of them, however that in itself is wrong. A notice of appeal should be specific to a specific case that the appeal is intended for and no joint notice can be filed for different appeals from different cases.

On the signature of the appellants that it was not dated nor shown where it was verified; the law is clear that an appeal shall be verified by showing the date and place where the appeal was made and the same shall be signed by the appellants. With respect to the appellants' argument, verification by the prison officer does not rectify the omission to show the date and place where the appellants signed the memorandum of appeal.

On the name variations by the 1st appellant, the argument by the State Attorney is valid, that the names reflected on the notice of appeal should be the exact names as appearing on the petition, an addition of name on one or omission on the other may conclusively presume that these are two different persons.

Coming to the names of the trial magistrate, the State Attorney argued that the name on the proceedings is N. Baro while the notice shows N.A. Baro, this argument is not valid. Perusal of the proceedings of trial court shows that the Hon. Trial Magistrate himself interchangeably used different initials. For instant on 01/11/2016, 25/05/2017 the Coram read N.A. Baro, however on 20/6/2017 the name was written N. Baro. Hence the notice cannot be invalidated for this reason as the trial court records themselves are the initials interchangeably.

Lastly, the appellants have urged the court under Article 107A(1) (2)(b) & (e) not to be dogged by technicalities. With respect this is not a mere technicality. There is a decision of the Court of Appeal in the cited case of Peter ShangwaVs R, Criminal Appeal No. 354/2008 which invalidated and struck out appeal owing to a defective notice, I cannot water down the current situation to a mere technicality as the defect is fatal.

That said and done, the objections raised are sustained, notice of appeal is for the reasons aforesaid incurably defective and is hence struck out making the appeal before me incompetent. The same is hereby struck out.

Dated at Arusha this 8th June, 2018.

(SGD)
S.M. MAGHIMBI
JUDGE

I hereby certify this to be a true copy of the original.




DEPUTY REGISTRAR
ARUSHA
03/07/2018