

**IN THE COURT OF APPEAL OF TANZANIA**

**AT DODOMA**

**(CORAM: MBAROUK, J.A., MZIRAY, J.A., And MWAMBEGELE, J.A.)**

**CRIMINAL APPEAL NO. 63 OF 2016**

**EMMANUEL CHIGOJI. .... APPELLANT**

**VERSUS**

**THE REPUBLIC ..... RESPONDENT**

**(Appeal from the decision of the Resident Magistrate's Court  
at Dodoma)**

**(Rutta, PRM (Ext. Jurisdiction.)**

**dated the 23<sup>rd</sup> day of November, 2015**

**in**

**Criminal Appeal No. 27 of 2015**

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**RULING OF THE COURT**

**MZIRAY, J.A.:**

The appellant was charged with and convicted of two counts of arson c/s 329, and causing grievous harm c/s 241 of the Penal Code, Cap. 16 R.E. 2002. He was sentenced to serve life imprisonment term in jail for the 1<sup>st</sup> count and 3 years imprisonment for the 2<sup>nd</sup> count. The sentences were ordered to run concurrently. His first appeal to the Resident Magistrate

Court (Rutta, PRM with Extended jurisdiction) was unsuccessful. He has now come to this Court on a second appeal.

Before the hearing of the appeal, Ms. Rosemary Shio, learned Principal State Attorney for and on behalf of the respondent Republic filed a Notice of Preliminary Objection on 23/2/2018 stating that ***the purporting appeal is incompetent and incurably defective for contravening Rule 68(2) and 75(1) of the Tanzania Court of Appeal Rules, 2009.***

Arguing the said preliminary objection when the appeal was called on for hearing, the learned Principal State Attorney submitted that the Notice of Appeal in this appeal was filed on 10/12/2015 and the same shows that the decision appealed against was delivered on 12/11/2015, while in the actual fact the decision was delivered on 23/11/2015. She submitted that the variance in dates makes the Notice of Appeal defective as it contravenes the provision of Rule 68(2) of the Tanzania Court of Appeal Rules, 2009 (the Rules). Since a Notice of Appeal in a criminal appeal institutes the appeal (Rule 68 (1) of the Rules), a defective and or incompetent Notice of

Appeal institutes no appeal, she argued, citing the case of **Omari Juma V. Republic**, Criminal Appeal No. 171 of 2014 (unreported) as authority.

The appellant, a layman, had nothing useful to submit on this point of law. He claimed that the Court should consider and feel pity for him as he is confined in prison and he is not the one who drafted the Notice. He shifted blame to the prison authority for the mischief. In the circumstance, he urged the Court to allow him amend the Notice of Appeal and proceed with the hearing of the appeal.

On our part, we have closely examined the Notice of Appeal in question. It is certainly violative of the requirements under Rule 68 (2) and Rule 75 (1) of the Rules. It should be noted that in a criminal appeal, it is the Notice of Appeal that institutes an appeal according to Rule 68 (1) of the Rules. Going by the appellant's Notice of Appeal, it is obvious that the same is fatally defective as the date when the impugned decision was delivered is wrongly referred in the Notice of Appeal. Instead of referring to 23/11/2015 as the actual date when the impugned decision was delivered, the appellant referred to 12/11/2015.

The Rules in the First Schedule, Form B/1, provides for a format for a Notice of Appeal and for the particulars to be filled therein by an appellant who is a prisoner. The format was not complied with in the Notice of Appeal filed in Court. As discussed above, the date when the impugned decision was delivered is wrongly referred. Now that the appellant wrongly cited the date of the Judgment of the High Court which is desired to be impugned then, we are of the firm view that this is a fatal defect. In **Elia Masena Kachala and Two others V. Republic**, Criminal Appeal No. 156 of 2012 (unreported), this Court stressed:-

*“ For a notice of appeal to this Court to be valid, it is mandatory that it must indicate not only the date of the challenged judgment and the name of the trial / appellate judge/ magistrate, but also the trial/ appellate court and the correct registration number of the case/ appeal in the lower court”.*

Similar position was taken by this Court in the cited case by the learned Principle State Attorney of **Omari Juma V. Republic** (*supra*) where it was observed that:

*"It is now settled law that since a notice of appeal institutes a criminal appeal under Rule 68(1) of the Rules, a defective one could not institute one. In numerous decisions of this Court, it has been held that, a notice of appeal which does not identify the decision sought to be appealed against, in terms of **the deciding Court, Judge or Magistrate; its registration number and date of delivery**, does not substantially conform with Rule 68(2) of the Rules, and is incurably defective. (Emphasis supplied).*

As hinted earlier, since it is a Notice of Appeal which institutes an appeal in terms of Rule 68(1) of the Rules, and in this appeal, the same being defective, we find the appeal incompetent.

In the upshot, we are constrained to sustain the respondent on the preliminary objection. Consequently, we strike out the Appeal.

**DATED** at **DODOMA** this 3<sup>rd</sup> day of March, 2018.

M.S. MBAROUK  
**JUSTICE OF APPEAL**

R.E.S. MZIRAY  
**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**