

**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)**

**Criminal Appeal No. 27 of 2015**

The appellant was charged with 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 for the 1<sup>st</sup> count and 3 years for the 2<sup>nd</sup> count concurrently. The appellant appealed to the Resident Magistrate Court which was unsuccessful.

Before the hearing of this appeal Ms. Rosemary Shio, learned Principal State Attorney, filed a Notice of Preliminary Objection on 23/2/2018 stating that the appellant's appeal was incompetent and incurably defective for contravening **Rule 68 (2) and 75 (1) of the Tanzania Court of Appeal Rules, 2009**. She further submitted that the Notice of Appeal in this appeal was filed on 10/12/2015 and the decision appealed against was recorded to be on 23/11/2015; whereas the decision was actually delivered on 23/11/2015. The altered dates made the Notice of Appeal defective as it contravenes the provision of **Rule 68 (2) of the Tanzania Court of Appeal Rules, 2009 ( the Rules)**. A defective and incompetent Notice of Appeal does not institute a criminal appeal. See authority case (**Omari Juma v Republic**, Criminal Appeal No. 171 of 2014 (unreported)). On the other hand, appellant pleaded with the court to feel pity for him as it was the prison authority that drafted the Notice. He urged the court to allow him to amend the Notice of Appeal and proceed with the hearing. After examination, the Notice of Appeal in question appeared to have violated the requirements under **Rule 68 (2) and Rule 75 (1) of the Rules**. Therefore proceeding the hearing of this appeal under the appellant's Notice of Appeal is defective.

The format in the First Schedule, Form B/1, was not complied with in the Notice filed in Court. In **Elia Masena Kachala and Two others V. Republic**, Criminal Appeal No. 156 of 2012 (unreported), the court stressed that a Notice of Appeal must indicate the date of the challenged judgement 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.

A similar position was taken in **Omari Juma v. Republic** (Supra) where it was observed that a notice of appeal must identify the deciding court, judge or Magistrate in order to institute **Rule 68 (1)**.

**Judgement**

Since the Notice of Appeal instituting this appeal was defective, the court found the appeal incompetent.