

IN THE COURT OF APPEAL OF TANZANIA

AT DODOMA

(CORAM: MBAROUK, J.A., MZIRAY, J.A., AND MWAMBEGELE, J.A.)

CRIMINAL APPEAL NO. 41 OF 2016

1.CLEMENCE MPONDELO } APPELLANTS
2.MAPAMBANO CHARLES }

VERSUS

THE REPUBLICRESPONDENT

(Appeal from the decision of the Resident Magistrate at Singida)

(H.A. Shaidi PRM- Ext. Jurisd.)

dated the 23rd day of October, 2015

in

Criminal Appeal No. 2 of 2015

RULING OF THE COURT

26th February & 2nd March, 2018

MBAROUK, J.A.:

When the appeal was called on for hearing, it transpired that the respondent/Republic through Ms. Rosemary Shio, learned Principal State Attorney had earlier

on 23 – 02 – 2018 filed a notice of preliminary objection to the effect that, the purported appeal is incompetent and incurably defective for failure to indicate the nature of conviction as required by the Tanzania Court of Appeal Rules, 2009. She amplified her objection by submitting that, Rule 68 (2) of the Court of Appeal Rules, 2009 (the Rules) mandatorily states that the notice of appeal shall state the nature of conviction, but the appellant's notices of appeal have failed to state the nature of conviction against which it is desired to be appealed. She added that, such a defect renders the notice of appeal incurably defective.

Furthermore, the learned Principal State Attorney submitted that, according to Rule 68(1) of the Rules, in criminal appeals before this Court, it is a notice of appeal which institutes an appeal. That means, she said, if the notice of appeal is defective, there shall be no appeal before the Court.

In the circumstance, as Rule 68(2) of the Rules has been contravened, Ms. Shio then urged us to strike out the appeal for being incompetent. In support of her argument, she cited to us the following two decisions of this Court, **Republic Vs. Jeremiah John and Four others**, Criminal Appeal No. 476 of 2015 and **Yohana Chibwingu Vs. The Republic**, Criminal Appeal No. 55 of 2010 (both unreported).

On their part, the appellants being lay persons, shifted the blame to prison officers who drafted their notices of appeal. They claimed that, as they were not the ones who drafted those notices of appeal, the Court should take into account that fact and allow their appeal to proceed to be heard.

In her re-joinder, Ms. Shio simply reiterated what she has submitted earlier on.

To appreciate what has transpired in those two notices of appeal, we have found it appropriate to reproduce them as follows:-

The relevant part of the 1st appellant's notice of appeal reads:-

“ NOTICE OF APPEAL

*TAKE NOTICE that
Appeals to the Court of Appeal of
Tanzania against the decision of the
Honourable Mr. H.E.SHAIDI, PRM
(EXT-JURISD) given at SINGIDA on
the 23rd day of OCTOBER 2015
whereby the appellant was convicted
CONVICTION AND SENTENCE
UPHELD and sentenced to 30YRS The
appeal is against conviction and the
sentence. The appellant intends to*

be present at the hearing of the appeal. The address of service of the appellant is C/O OFFICER INCHARGE, DODOMA PRISON – ISANGA P.O.BOX 921, DODOMA Dated this 26th day of OCTOBER, 2015

Signed: CLEMENCE MPONDELA”

The relevant part of the 2nd appellant’s notice of appeal reads:-

“ NOTICE OF APPEAL

TAKE NOTICE that MAPAMBANO CHARLES Appeals to the Court of Appeal of Tanzania against the decision of the Honourable Mr. Justice H.E. SHAHIDI (EXT-JURISD) given at SINGIDA On the 23rd day of OCTOBER

*2015 whereby the appellant was convicted of APPEAL UPHELD and sentenced to 30years . The appeal is against conviction and the sentence. The appellant intends/does not intend to be present at the hearing of the appeal. The address of service of the appellant is C/O I/C ISANGA PRISON P.O.BOX 921, DODOMA
Dated this 27th day of OCTOBER, 2015.*

Signed: MAPAMBANO CHARLES"

In our decision in the case of **Nichontize S/O Rojeli Vs. Republic**, Criminal Appeal No. 177 of 2014 (unreported), we analysed the requirements stated in Rule 68 (2) of the Rules and said that, the notice of appeal must state, the name of the High Court Judge and the number of

the case to be appealed against and the nature of the acquittal, conviction, sentence order or finding against which it is desired to be appealed.

Several decisions of this Court have stated that, in a criminal appeal a notice of appeal which has failed to comply with the mandatory requirement under Rule 68(2) of the Rules renders the notice of appeal incurably defective. For example see **Republic Vs. Jeremiah John** and **Yohana Chibwingu Vs. Republic** (both supra) to name a few.

As the appellants' notices of appeal have contravened the mandatory requirement under Rule 68(2) of the Rules for their failure to state the nature of conviction, we join hands with the learned Principal State Attorney that the appellants' notices of appeal are incurably defective. Furthermore, as the notice of appeal according to Rule 68(1) of the Rules is the one which institutes the appeal and as the appellants' notices of appeal are incurably defective, we have no other

option but to find the appeal incompetent. In the result, we uphold the objection raised by the learned Principal State Attorney and hereby strike out the appeal.


DATED at DODOMA this 27th day of February, 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 true copy of the original.


E.F. RUSSI
DEPUTY REGISTRAR
COURT OF APPEAL