**IN THE COURT OF APPEAL OF TANZANIA**
**AT TABORA**

**(CORAM: MBAROUK, J.A., MANDIA, J.A. And MMILLA, J.A.)**
**CRIMINAL APPEAL NO. 324 AND 325 OF 2009**

**1. NGÓMBE S/O BAHAME**
**2. NKINGWA S/O NKOMBA** **.....APPELLANT**

**VERSUS**

**THE REPUBLIC.....RESPONDENT**
**(Appeal from the decision of the High Court of Tanzania at Tabora)**

**(Kaduri, J.)**

**dated the 28th day of September, 2009**
**in**
**DC. Criminal Appeal No 32 cf of 2009**

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**RULING OF THE COURT**

**11th & 17th September, 2013**

**MMILLA, J.A.:**

The appellants in this case, Ngómbe Bahame and Nkingwa Nkomba (the first and second appellants respectively), were charged in the District Court of Meatu in Meatu District in Shinyanga Region with armed robbery contrary to sections 285 and 286 of the Penal Code Cap. 16 of the Revised Edition, 2002. That court found that the evidence before it had not established the offence of armed robbery but the cognate offence of robbery with violence. It accordingly

substituted the latter offence for which it convicted them. They appealed to the High Court of Tanzania at Tabora which upheld conviction and sentence, hence the instant appeal to this Court.

Before us, both appellants are appearing in person and undefended while the respondent Republic is being represented by Mr. Hashim Ngole, learned Senior State Attorney.

When the appeal came up for hearing before us, Mr. Hashim Ngole raised a point of preliminary objection premised on the competence or not of the appellants' appeals in so far as their respective notices of appeal do not indicate the nature of the offence of which they were convicted by the trial court.

In his brief but powerful submission in support of the preliminary objection, Mr. Hashim Ngole has contended that because the appellants were convicted of the offence of robbery with violence, their respective notices of appeal ought to have reflected as such instead of showing that they were appealing against conviction on armed robbery. In his view, to have done so was a contravention of Rule 61 (2) of the Tanzania Court of Appeal Rules, 1979 (the old Rules), it being a fact that this case dates back to 1999. He added that because the notice of appeal in criminal cases institutes the appeal, the conclusion that the Court is not properly moved when the notice of appeal if

fatally defective cannot be avoided. He asked this Court to strike out the appeal.

On their part, both appellants who are understandably lay persons, had nothing useful to tell us apart from their complaint that they were not personally not to blame for those mistakes because documents of such kind are prepared on their behalf by the prison administration. Of course, we take that as a fact, but we are quick to add here that because our hands are tied by the rules, there is nothing we can do about that.

On the other hand, we hasten to agree with Mr. Hashim Ngole that the notice of appeal which does not indicate the nature of the offence of which the appellant was convicted by the trial court as is the case here as elaborately submitted by him, is defective. This is in terms of the provisions of Rule 61(2) of the old Rules. That rule provides that:-

> **"Every notice of appeal shall state briefly the nature of the acquittal, conviction, sentence, order or finding against which it is desired to appeal,** and shall contain a full and sufficient address at which any notices or other documents connected with the appeal may be served on the appellant or his advocate and, subject to Rule 14, shall be signed by the appellant or his advocate." [Emphasis provided].

As will be grasped, the provision was couched in mandatory terms.

A situation such as the present was encountered in the case of **Lazaro Msote Sangulu and others v. Republic, Criminal Appeal No. 134 of 2006, CAT, Dodoma Registry (unreported)** in which the subject of discussion was Rule 61 (2) of the **Tanzania Court of Appeal Rules, 1979**. It was held in that case that:-

" ... [It] is very clear that a notice of appeal should contain, *inter alia,* the nature of the offence which the appellant was charged with and the sentence imposed. The sub - rule is couched in mandatory terms. **Failure to do so is a fatal irregularity**. In **John Petro v. Republic, Criminal Appeal No. 130 of 2010 (unreported)** the court stated:-

"It is now settled law that under the same Rule 61(2) it was mandatory for a notice of appeal to state the nature of the conviction, sentence, order or finding of the High Court [or Resident Magistrate Court with Extended jurisdiction] against which it is desired to appeal. Failure to do so rendered and still renders under the 2009 Rules, the purported appeal incompetent." **[Emphasis provided].**

This being the position, it is unavoidable to find and hold that because the notice of appeal is fatally defective, and since in terms of sub Rule (1) of Rule

61 of the old Rules a notice of appeal instituted the appeal, the instant appeal is incompetent and is liable to be struck out. In view thereof, this appeal is accordingly struck out.

Order accordingly.

DATED at TABORA this 17th day of September, 2013.

M. S. MBAROUK

**JUSTICE OF APPEAL**

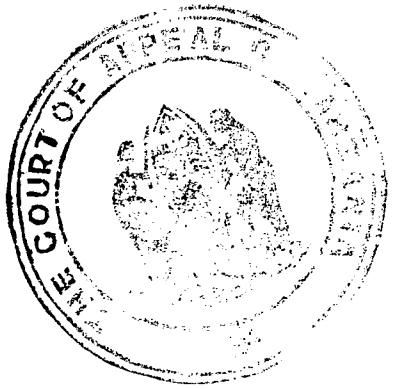
W. S. MANDIA

**JUSTICE OF APPEAL**

B. M. MMILLA

**JUSTICE OF APPEAL**

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




Z. A. Maruma

**DEPUTY REGISTRAR**

**COURT OF APPEAL**