

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

CORAM: OTHMAN, C.J., MBAROUK, J.A. And KAIJAGE, J.A.

CRIMINAL APPEAL NO. 258 OF 2014

**1. ALBANUS ALOYCE
2. MARCO IBRAHIM** }APPELLANTS
VERSUS
THE REPUBLIC RESPONDENT

**(Appeal from the decision of the High Court of Tanzania
at Moshi)**

(Munuo, J.)

**Dated 26th day of March, 2002
in
Criminal Appeal No. 133 of 2001
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RULING OF THE COURT

27th & 29th October, 2014.

MBAROUK, J.A.:

When the appeal was called on for hearing, it transpired that there was a notice of preliminary objection filed earlier on 24th October, 2014 to the effect that the appeal is incompetent for non-compliance with Rule 68(1) and (2) of

the Court of Appeal Rules, 2009 (the Rules). The said notice of preliminary objection was lodged by Ms. Neema Mwanda, learned Principal State Attorney for the respondent/Republic.

At the hearing, Ms. Mwanda submitted that, the notice of appeal filed by the appellants found at pages 51 and 52 of the record are defective. She gave three reasons to support her submission. **Firstly**, that both appellants' notices of appeal have indicated that they have been convicted with the offence of robbery with violence which was not true. Ms. Mwanda told the Court that, the decision of the High Court which is subject to this appeal quashed the conviction of robbery with violence and substituted therewith the conviction of armed robbery contrary to sections 285 and 286 of the Penal Code. Hence, she said, the proper conviction which stands and which should have appeared in the appellants' notices of appeal is that of

armed robbery and not robbery with violence. **Secondly,** Ms. Mwanda submitted that, both appellants' notices of appeal have shown a wrong date of the decision of the High Court which is subject to this appeal. She contended that, both notices of appeal have shown that the decision of the High Court subject of this appeal have shown 12-6-2001, whereas the actual date of that decision as it appears at page 42 of the record is 26-3-2002. **Thirdly,** Ms. Mwanda, submitted that, there is a variance between the number of the case found in the appellants' notices of appeal and the number which appears in the actual appeal case subject to this appeal. She said, the appellants' notices of appeal shows that, they intend to appeal against Criminal Appeal No. 133 of 2002, whereas the actual number as per the record of appeal is High Court Criminal Appeal No. 133 of 2001.

The learned Principal State Attorney urged us to strike out the appeal for being incompetent as Rule 68(1) and (2) of the Rules was violated.

On their part, the appellants who appeared in person, unrepresented, prayed for the indulgence of the Court to assist them so that their appeal could be heard. They urged the Court to consider them as mere prisoners who have not drafted those defective notices. After all, they said, they are not lawyers.

It is now settled that, violation of the mandatory requirements under Rule 68 of the Rules renders the notice of appeal defective and that renders the intended appeal to be incompetent. As pointed out by the learned Principal State Attorney in the instant appeal, the appellants' notices of appeal are defective for having violated the mandatory

requirements under Rule 68 of the Rules. Firstly, they both have indicated in their notices of appeal that they were convicted of the offence of robbery with violence, while that offence was substituted with the offence of armed robbery by the High Court. Secondly, the said appellants' notices of appeal indicated that the decision subject to this appeal is dated 12-6-2001 instead of the actual date which is 26 -3-2002. Thirdly, both appellants' notices of appeal have shown wrong number of the High Court case subject to this appeal. Instead of showing that they are appealing against High Court Criminal Appeal No. 133 of 2001 they have shown Criminal Appeal No. 133 of 2002.

There is a plethora of the decisions of this Court which emphasize the compliance with Rule 68 of the Rules. For example, see **Kagoma Renald @ Rabani and Another v. The Republic**, Criminal Appeal No. 234 of 2013,

Nichontinze s/o Rojeli v. The Republic, Criminal Appeal No. 177 of 2014, **Abeid s/o Seif v. Republic**, Criminal Appeal No. 228 of 2013, and **Elia Masemo Kachala and Two others v. Republic**, Criminal Appeal No. 156 of 2012 (All unreported) to name a few.

In the case of **Nichontinze s/o Rojeli** (supra), this Court has emphasized the necessity to consider the compliance with Rule 68 of the Rules by considering the following factors when the appellant lodges his notice of appeal, where it said as follows:-

"The notice of appeal must contain the following:-

- 1. Indicate a correct date of the judgment intended to be appealed against,*

2. *Insert the name of the High Court judge and number of the case to be appealed against,*
3. *State briefly the nature of the acquittal, conviction, sentence, order finding against which it is desired to appeal."*

The above mentioned factors have to be mandatorily complied with when the appellant lodges his notice of appeal, failure of which, the appeal is rendered incompetent.

In the instant appeal, the appellant have surely violated all the above mentioned conditions in their notices of appeal. Hence, the existence of those defects render the appeal incompetent. It has also to be considered that, Rule 68 (1) of the Rules mandatorily states that "*it is the notice of appeal which shall institute the appeal.*"

As indicated earlier herein above, there are defects in the appellants' notices of appeal. Those pointed out defects have rendered the appellants' notices of appeal incurably defective. For being defective, we are constrained to find the purported appeal incompetent and hence, we strike it out.

DATED at **ARUSHA** this 28th day of October, 2014.

M.C. OTHMAN
CHIEF JUSTICE

M. S. MBAROUK
JUSTICE OF APPEAL

S.S. KAIJAGE
JUSTICE OF APPEAL

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



F. J. KABWE
DEPUTY REGISTRAR
COURT OF APPEAL