

IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM
(CORAM: MBAROUK, J.A., MZIRAY, J.A., And LILA, J.A.)

CRIMINAL APPEAL NO. 359 OF 2013

DENIS KASEGEAPPELLANT

VERSUS

THE REPUBLIC.....RESPONDENT

(Appeal from the decision of the High Court of Tanzania
at Dar es Salaam)

(Bongole, J.)

dated the 11th day of October, 2013

in

Criminal Appeal No. 78 of 2013.

RULING OF THE COURT

30th June, & 11th July, 2016

MZIRAY, J.A.:

When the appeal was called on for hearing, the Court *suo motu* raised point of law as to the competency of the appeal and for that matter it wanted to satisfy itself as to the correctness or otherwise the legality of the notice of appeal of the appellant lodged in this appeal. This was after the Court had detected that the appellant's notice of appeal did not indicate the true and correct name of High Court Judge who presided over

the case, [i.e. Criminal Appeal No. 28 of 2013], whose decision is appealed against. The Court observed that the appellant inserted the name of Bongole J, as the presiding Judge. We have no such name of a Judge in the list of the High Court Judges. The Court then invited the parties to address it on this point.

In response to the point of law raised by the Court *suo motu*, the appellant who appeared in person, unrepresented, readily conceded to the defect. However, being a prisoner, he shifted the blame to the Prison Authority for preparing the defective notice of appeal. He insisted to proceed with the appeal despite the detected defect.

On her part, Ms. Anita Sinare, learned State Attorney for the respondent/Republic also conceded that the name of the judge appearing in the notice of appeal is Bogore, J. instead of Bongole J., the judge who presided over the case whose decision is appealed against. She further added that, such a defect renders the appeal before the Court to be incompetent. She thus prayed for the appeal be struck out.

Under Rule 68(1) it is the notice of appeal which institutes an appeal to this Court. It is now settled that, in compliance with the mandatory provision of Rule 68 (1) and (2) of the Court of Appeal Rules, 2009 (the Rules), a notice of appeal must insert a correct name of the High Court judge and the number of the case to be appealed against. Various decision of this Court have emphasized the necessity of compliance with the requirements under Rule 68 of the Rules. For instance, see decisions in the cases of;

1. ***Albanus Alyoce and Another v. R***, *Criminal Appeal No. 258 of 2014*
2. ***Hamis s/o Yazid and Another v. R***, *Criminal Appeal No. 234 of 2013*
3. ***Abeid s/o Seif v. R***, *Criminal Appeal No. 228 of 2013*
4. ***Elia Masemo Kachala and Two Others v. R***, *Criminal Appeal No. 156 of 2012*
5. ***Nichontinze s/o Rojeli v. R***, *Criminal Appeal No. 177 of 2011 [All unreported]*.

In all the cases cited above, this Court has stressed that compliance with Rule 68 is mandatory. Taking for example the case of **Nichontinze s/o Rojeli** (supra), the Court stated matters which a

notice of appeal must contain so as to comply with Rule 68 of the Rules.

- 1. Must indicate the correct date of Judgment intended to be appealed against.*
- 2. Insert **the name of the High Court Judge** and the number of the case to be appealed against.*
- 3. State briefly the nature of the acquittal, conviction, sentence, order or findings which it is desired to appeal. [Emphasis added].*

Non-compliance with those mandatory requirements of Rule 68 of the Rules render a notice of appeal defective and since it is the notice of appeal which initiates the appeal then, the appeal became incompetent. It is apparently clear that the notice of appeal in the instant case has failed to insert the correct name of High Court Judge who presided over the case whose decision is appealed against. That defect, admittedly, renders the notice of appeal defective. For being defective, we find the purported

appeal incompetent. In the circumstance therefore, we strike out this appeal.

It is so ordered.

DATED at DAR ES SALAAM this 1st day of July, 2016.


M.S. MBAROUK
JUSTICE OF APPEAL

R.E.S MZIRAY
JUSTICE OF APPEAL

S. LILA
JUSTICE OF APPEAL

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




E.Y. MKWIZU
DEPUTY REGISTRAR
COURT OF APPEAL