

TANZANIA / JUDGMENT

# john petro vs republic 2015

## tzca 232 31 august 2015

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IN THE COURT OF APPEAL OF TANZANIA AT MBEYA (CORAM: MASSATI, 3.A, MUSSA. J.A. And MUGASHA, J.A.1 CRIMINAL APPEAL N0.275 OF 2014 JOHN PETRO..... APPELLANT AND THE REPUBLIC..... RESPONDENT (Appeal from the decision of the High Court of Tanzania at Mbeya) " (Mrema J.) dated the 19th day of August, 2001 in DC.Criminal Appeal No.90/2001 RULING OF THE COURT 28thAugust & 1st September, 2015 MUSSA, J.A.: In the District Court of Mbeya, the appellant was arraigned and convicted for defilement, contrary to section 136 of the Penal Code, chapter 16 of the Revised Laws, (the code). Upon conviction, he was sentenced to thirty years imprisonment, six strokes of the cane and ordered to redress the alleged victim with a sum of shs. 300,000/= by way of compensation. Dissatisfied, the appellant preferred an appeal to the High Court, following which, in the course of his deliberations, the first appellate Judge (Mrema, J.)/ noted that the offence of defilement, with which the appellant was arraigned and convicted, had been repealed and relocated as one of the categories of rape under the provisions of section 130 (2) (e) of the code. Nonetheless, the learned first appellate Judge found the defect of preferring the charge under a repealed provision to be curable and; having substituted the conviction of defilement with one of rape, the appeal was dismissed in its entirety in a judgment that was pronounced on the 19th August, 2002. The appellant was still discontented but, as it were, he failed to lodge a Notice of Appeal to this Court within the prescribed time. To redress the infraction, the appellant re-approached the High Court seeking enlargement of time within which to lodge the Notice of Appeal but his quest was declined and dismissed by the High Court (Msuya, J.). The dismissal order was delivered on the 22nd June, 2009. Aggrieved by the dismissal order, he resolved to impugn the High Court verdict by way of an appeal which was, however, objected to by the Republic on account of a defective Notice of Appeal. The appellant readily conceded the defect and 2 his appeal was, accordingly, struck out by this Court on the 30th June, 2011. In response, the appellant refreshed his application before the High Court, once again, seeking enlargement of time within which to file the Notice of Appeal. The application was unopposed and the High Court (Mwangesi, J.), allowed the appellant to lodge his Notice within twenty one days from the date of the Ruling, which was the 4th September, 2012. A little later, on September the 13th, the appellant lodged a fresh Notice which purportedly instituted the appeal presently under our consideration. At the hearing, the

appellant was fending for himself, unrepresented, whereas the respondent had the services of Ms. Catherine Gwaltu, learned Senior State Attorney. The latter greeted the appeal with a preliminary objection to the effect that the same has been vitiated by an incurably defective Notice of Appeal. Expounding her contention, the learned Senior State Attorney submitted that the Notice falsely tells that the appellant was convicted for defilement contrary to section 136 of code. In reality, she charged, the appellant was ultimately convicted for rape, as distinguished from the repealed offence of defilement. Ms.Gwaltu then summed up her 3 submission with the contention that, to the extent that the Notice of Appeal misinforms about the nature of the conviction, the appeal itself is vitiated and rendered incompetent. To buttress her argument, the learned Senior State Attorney relied on the unreported Criminal Appeal No. 254 of 2009 - The DPP Vs ACP Abdallah Zombe and Others. For his part, in his accustomed frankness, the appellant promptly conceded the defect and prayed for directions on the way forward. We have had no difficulty in appreciating the force in Ms. Gwaltu's submission. Upon a plethora of decisions by the Court, it is now settled that it is a mandatory requirement for the Notice of Appeal to state the nature of the conviction, sentence, order or finding of the High Court against which it is desired to appeal. Failure to do so renders the appeal incompetent. Among the many decided cases which have firmly cemented this requirement, we shall only refer to the unreported Criminal Appeal No. 268 of 2006 - Majid Goa Vedsatus Vs The Republic. In that case, the appellant was convicted by the trial court for an offence of rape. His appeal to the High Court was dismissed, whereupon he lodged a notice to the Court which showed that he was appealing against a conviction of "armed robbery". It was successfully argued by the respondent Republic that on account of the misinformation the appeal was, thereby, rendered incompetent. All said and done, we rule that this purported appeal is incompetent and, accordingly, the same is struck out. The appellant is at liberty to access the court in pursuit of his right subject to the laws of limitation. DATED at MBEYA this 31st day of August, 2015. S.A.MASSATI JUSTICE OF APPEAL K.M.MUSSA JUSTICE OF APPEAL S.MUGASHA JUSTICE OF APPEAL I certify that this is a true copy of the original. 'IKYA SENIOR DEPUTY REGISTRAR COURT OF APPEAL 5

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