

TANZANIA / JUDGMENT

20180308 TZCA Dar es Salaam

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IN THE COURT OF APPEAL OF TANZANIA AT DODOMA (CORAM: MBAROUK. J.A .. MZIRAY. J.A .• And MWAMBEGELE. J.A) CRIMINAL APPEAL No. 166 OF 2017 SEMENI MGONELA CHIWANZA APPELLANT VERSUS T·HE REPUBLIC
RESPONDENT (Appeal from the decision of the High Court of Tanzania at Dodoma) (Mansoor. J.) dated the 31st day of March, 2017) in --DCCrim1narAopeal No. 73 of 2016 RULING OF THE COURT th ih & 9 March, 2018 MBAROUK, l.A.: When the appeal was called on for hearing, it transpired that there was a notice of preliminary objection filed earlier on 05 th March, 2018 by Mr. M.C. Sarara, learned State Attorney who represented the respondent/Republic. The said notice contained a single point of law, replicates as follows:- "... TAKE NOTICE that at the hearing of the Appeal the Republic shall raise points of 1 preliminary objection on the following ground:- That this appeal is incompetent before this Court as the NOTICE OF APPEAL contravening Rule 68(1) of the Tanzania . Court of Appeal Rules GN No 368 of 2009). The notice of this appeal states that the Appellant was convicted under section 312{b) of the PENAL CODE CAP 16 RE 2002 2002..." In his address on that point of law, the learned State Attorney submitted that, the appellant was not convicted of Burglary under section 299(1) and (2) of the .. Penal Code, but section 312(b), suspected of having been found in possession of goods which have been stolen or unlawfully acquired. He added that the notice of appeal is in contravention of Rule 68(2) of the Court of Appeal, 2009 (the Rules) as it has indicated that the appellant was convicted of Burglary contrary to section 299(1) and

- (2) of the penal Code instead of being suspected of having been found in possession of a motorcycle which has been stolen or unlawfully acquired under section 312 2
- (b) of the Penal Code. He further submitted that, the anomaly renders the appeal incompetent because the notice of appeal in terms of Rule 68(1) of the -Rules is the one which institutes a criminal appeal. In support of -his argument, he referred us to a Case of Lukelo Uhahula Vs. Republic, Criminal Appeal No. 23 of 2012 (unreported.) F0r--that-r-easori-,Mr:-:-
Sa.r:ar:a_urged _usto_find._tbe_ _ notice of appeal defective. For being defective, that renders the appeal incompetent, hence prayed for the appeal to be struck out. On his part, being a lay person, the appellant had nothing worthwhile to submit, he simply stated that he is a prisoner and, not the one who drafted the notice but Prison Officers. The intended appellant shifted the burden to the Prison Authority. Eventually, he left the matter to the Court to decide. We, on our part, agree with learned State Attorney that the notice of appeal

in record is defective. The same 3 indicates an offence to which the appellant was not convicted of. The High Court's decision particularly at page 74 confirmed that the conviction and the sentence meted by the trial court found the appellant in possession of stolen motorcycle, hence guilty of the lesser offence of possession of goods suspected of having been stolen or unlawfully acquired contrary to section 12(b) of the Penal Code Cap. 16 R.E. 2002. In this regard, the appellant failed to state briefly the nature of the order or finding against which he desires to appeal. A valid notice of appeal, according to Rule 68(2) of the Court of Appeal Rules and decided cases, inter alia, has to state briefly, the nature of the order or finding against which it is desired to appeal. Absence of such particulars renders a notice of appeal defective. There is a plethora of authorities of this Court which emphasize the requirement of complying with Rule 68 of the Rules. For example, Lukelo Uhahula (supra), 4 Nichontize s/o Rojeli v. Republic, Criminal Appeal . No. 177 of 2014, John Petro v. Republic, Criminal Appeal No. 130 of 2010, Majid Goa Vedastus v. Republic, Criminal Appeal No. 268 of 2006 (all unreported) just to mention a few. In the event, we are increasingly of the view that, the above pointed out defect is fatal enough to dispose of is so ordered. DATED at DODOMA this 8th day of March, 2018. M.S. MBAROUK JUSTICE OF APPEAL R.E.S. MZIRAY JUSTICE OF APPEAL JCM MWAMBEGELE JUSTICE OF APPEAL I certify that this is true opy of the original. E.F. · ss· DEPUTY R ISTRAR COURT OF PPEAL 5

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