

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

**(CORAM: JUMA, C.J., MBAROUK, J.A. And MZIRAY, J.A.)**

**CRIMINAL APPEAL NO 130 OF 2016**

**DIRECTOR OF PUBLIC PROSECUTIONS.....APPELLANT**

**VERSUS**

**ALI ABRAHMAN ALI..... RESPONDENT**

**(Appeal against the Ruling and Order of the High Court of Zanzibar held at  
Vuga - Zanzibar)**

**(Hon. R. H. Mohamed, J.)**

**dated the 8<sup>th</sup> April, 2016**

**in**

**Criminal Case No. 07 of 2016**

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**RULING OF THE COURT**

**29<sup>TH</sup> November, & 5<sup>th</sup> December, 2017**

**JUMA, C.J.:**

Before us today, the Director of Public Prosecutions is appealing from the ruling of the High Court of Zanzibar at Vuga (Rabia Mohamed, J.) dated 8<sup>th</sup> April 2016. Before the scheduled date for hearing of the appeal, Mr. Masoud Hamidu Rukazibwa, learned counsel for the respondent, filed a Notice of Preliminary Objection on behalf of ALI ABRAHMAN ALI

(Respondent herein). The objection sought the dismissal of this appeal on a ground that the notice of appeal initiating the appeal is incurably defective for contravening Rule 68 (2) and (7) of the Court of Appeal Rules, 2009 (the Rules), which renders the appeal incompetent before the Court. At the hearing of the preliminary objection on 29<sup>th</sup> November, 2017, Mr. Rukazibwa focused his submissions on the details of the notice of appeal which the appellant relied on to institute the appeal. He submitted that the details in the notice have failed to state briefly the nature of the order against which the appellant is appealing from. This shortcoming rendered that notice of appeal incurably defective.

The Director of Public Prosecutions was represented by Mr. Suleiman Haji Hassan, learned Principal State Attorney, who was assisted by Mr. Omar Makungu Omar and Ms. Arafa Salim Rashid, both learned State Attorneys. While referring to the Notice of Appeal appearing on pages 18 and 129 of the record, the Mr. Rukazibwa submitted that the phrase *"intends to appeal to the Court of Appeal of Tanzania against the whole of said ruling"* which the appellant employed to signify the intention to appeal, is so generalized that it fails to state the actual nature of the

order or finding against which the appellant intends to appeal against, as is required under sub-rule (2) of Rule 68 of the Rules.

Mr. Rukazibwa went further, and submitted that the Ruling which the learned trial Judge delivered on 8/4/2016, and against which the appellant is apparently aggrieved with, covered several matters, like the impartiality of the trial Judge, refusal of the trial Judge to recuse herself, and even several requests to file additional witnesses' statements. The learned counsel argued that it is not clear from the notice of appeal, which of these or any other matters, the appellant is intending to appeal against.

After urging us to agree with his submissions that the notice of appeal is defective for infringing sub-rule (2) of Rule 68 of the Rules, the learned counsel referred us to sub-rule (1) of the same Rule and submitted that a notice of appeal that is defective for contravening Rule 68 (2) cannot thereby initiate a criminal appeal to this Court under Rule 68 (1) of the Rules. He added that, the notice of appeal which the appellant filed to initiate this criminal appeal, is as good as having no notice of appeal at all for that purpose. As a result, he surmised that for

want of a valid notice of appeal, there is no competent appeal before the Court.

To cement his submissions that we should strike out the appeal, Mr. Rukazibwa placed reliance in **Khamis Abdul-Wahab Mahmoud V. Director of Public Prosecutions**, Criminal Appeal No. 569 of 2015 (unreported) where the Court struck out that appeal because the notice of appeal purporting to initiate that appeal had violated Rule 68 (2) of the Rules. He urged us to mete out similar fate to strike out the instant appeal because it was initiated by a defective notice of appeal.

Submitting, in reply on behalf of the appellant, Mr. Suleiman Haji Hassan readily conceded the ground of objection. He submitted that to the extent that the notice of appeal which the appellant relied on to initiate this appeal does not state the nature of the order or finding against which the appellant desires to appeal against, that notice is incurably defective for failing to comply with Rule 68 (2) of the Rules. He agreed with Mr. Rukazibwa that the defective notice of appeal rendered this appeal incompetent, and this appeal should be struck out.

From submissions of the two counsel, we found a common ground that by failing to specify the nature of the order or finding against which the appellant DPP is appealing against, the notice of appeal appearing in the record of appeal, is defective for infringing Rule 68(2) of the Rules. That notice of appeal should not have generalized that the DPP is appealing "*against the whole of the said ruling.*" We agree with both learned counsel that sub-rule (2) of Rule 68 of the Rules require, in mandatory terms, notices of appeal to state briefly what that decision or order of the learned trial Judge, against which the appellant desires to appeal. The relevant sub-rule (2) of Rule 68 is mandatory:

*"(2) Every notice of appeal **shall state briefly the nature of the acquittal, conviction, sentence, order or finding against which it is desired to appeal...**"*

[Emphasis added).

The mandatory requirement of notices of criminal appeal to the Court to state the nature of order or finding was underscored in **Mnazi Philimon V. R.**, Criminal Appeal No. 53 of 2013 (unreported) where the Court stated:

*"...Furthermore, the Court has consistently held that "it is a mandatory requirement" of Rule 68(2) of the Rules "for the notice of appeal to state the nature of the conviction, sentence, order, or finding of the High Court against which it was desired to appeal." Failure to do so, according to settled law, renders the purported appeal incompetent: see, for instance, **Majid Goa Vedastus v. R.**, Criminal Appeal No. 268 of 2006, **William Sunday v. R.** (supra), **Emmanuel Kanengo v. R.**, Criminal Appeal No. 432 of 2007, and **January Makanta v. R.**, Criminal Appeal No. 55 of 2013 (all unreported)."*

Both Mr. Rukazibwa and Mr. Hassan are correct to stand on a common ground that it is a notice of appeal envisaged under sub-rule (1) of Rule 68 of the Rules which initiates criminal appeals to the Court. The sub-rule states:

*68.-(1) **Any person who desires to appeal to the Court shall give notice in writing,** which shall be lodged in triplicate with the Registrar of the High Court at the place where the decision against which it is desired to appeal was given, within thirty days of the date of that decision, **and the notice of appeal shall institute the appeal.** [Emphasis added].*

The Court has over several decisions, weighed in on the position that only valid notice of appeal that can validly initiate criminal appeals to the Court. For instance, in **Shukuru Tunugu vs. R**, Criminal Appeal No. 48 of 2012 the Court stated:

*"...From submissions, the learned State Attorney has with due respect articulated the correct position of the law laid down in many of our decisions including the case of **Hilda Andolile @ Panjani vs. Republic**, Criminal Appeal No. 203 of 2009 (unreported) which she cited. The position is, without a Notice of Appeal there would be no competent appeal for determination by this Court."*

We are of the decided view that, to the extent that the notice of appeal purporting to initiate this appeal has not complied with Rule 68 (2) of the Rules, that notice is defective and cannot in terms of sub-rule(1) of the Rule 68, initiate this instant appeal.

In light of the foregoing, we are inclined to hold this appeal as incompetent. We accordingly order it to be struck out.

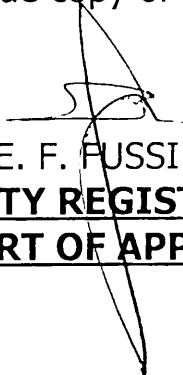
**DATED** at **ZANZIBAR** this 4<sup>th</sup> day of December, 2017

I. H. JUMA  
**CHIEF JUSTICE**

M. S. MBAROUK  
**JUSTICE OF APPEAL**

R.E.S. MZIRAY  
**JUSTICE OF APPEAL**

I certify that this is a true copy of the original

  
E. F. FUSSI  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**