

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

(CORAM: LUANDA, J.A., MMILLA, J.A., And MKUYE, J.A.)

CIVIL APPEAL NO. 52 OF 2017

**DR. ABRAHAM ISRAEL SHUMO MURO.....APPELLANT
VERSUS**

**NATIONAL INSTITUTE FOR MEDICAL RESEARCH.....1ST RESPONDENT
ATTORNEY GENERAL.....2ND RESPONDENT**

**(Appeal from the Decision of the High Court of Tanzania (Labour Division)
at Mwanza)**

(Nyerere, J.)

**Dated the 21st day of July, 2015
in
Labour Dispute No. 01 of 2014**

.....

RULING OF THE COURT

30th November, & 8th December, 2017.

LUANDA, J. A.:

The above named appellant is aggrieved by the decision of the High Court of Tanzania (Labour Division Mwanza). He filed this appeal in this Court to challenge the same.

However, before the appeal was called on for hearing, Mr. Lameck Merumba, learned State Attorney who appeared for both respondents filed a preliminary point of objection, a notice of which was served upon a Law

firm going by the name of Matata & Co. Advocates. The point of objection runs as follows:-

"The Appeal before the Court is incompetent for being lodged with a Notice of Appeal which contravenes Rule 83 (6) of the Court of Appeal Rules, 2009."

Clarifying the preliminary point raised, Mr. Merumba said the Notice of Appeal is titled "In The Court of Appeal of the Unied (*sic*) Republic of Tanzania at Mwanza" which is not in conformity with Form D in the First Schedule to the Tanzania Court of Appeal Rules, 2009 (the Rules). To reinforce his argument he referred us to two decisions of this Court namely, **M/s Brazafric Enterprises Ltd. v. Kaderes Peasants Development (PLC)**, Civil Appeal No. 123 of 2014 and **Director TOS Filling Station v. Ayoub and 9 Others**, Civil Application No. 30 of 2010 (Both unreported) where we struck out the notice of appeal for being incompetent basically for failure to cite properly the title of the Court of Appeal. He thus prayed to the Court to dismiss the appeal with costs.

Responding, Mr. Chama Matata learned counsel from Matata & Co. Advocates for the appellant, submitted that the title of the Court is properly cited. He said in terms of Article 117 of the Constitution of The United Republic of Tanzania (the Constitution) Cap. 2 R.E. 2002 as well as section 3 of the Appellate Jurisdiction Act, Cap. 141 R.E. 2002 (the AJA) the proper title is The Court of Appeal of The United Republic of Tanzania. However, he went on to say that the same Article stated in clear words that the Court is to be referred to in short as The Court of Appeal. He did not dispute the title of the Court to contain spelling mistake in the word "Unied" instead of "United". That mistake, he went on to say, is a minor defect which does not go to the root of the notice of appeal. In any case, he said the defect did not prejudice the respondents in any way.

As regards the cases cited, Mr. Matata said they are distinguishable with this case, he charged. He prayed to the Court to dismiss the objection.

After Mr. Matata had finished his submission, the Court drew his attention to other three defects in the Notice of Appeal namely, one, this being an appeal, the proper party who intends to appeal is always referred to as the appellant. In this case the party who intended to appeal is referred to as "APPLICANT/INTENDED APPELLANT." The other two defects

are found in the body of the Notice of Appeal. Again it refers to the intended appellant as "Applicant". And the date of the decision of the High Court is stated as 21st July, 2014 instead of 21st July, 2015.

In order to appreciate the point we wish to drive home, we reproduce the relevant portion of the said Notice of Appeal:-

***"IN THE COURT OF APPEAL OF UNITED (sic)
REPUBLIC OF TANZANIA***

AT MWANZA

CIVIL APPEAL NO..... OF 2015

In the matter of Intended Appeal No..... of 2015

BETWEEN

DR. ABRAHAM ISRAEL

***SHUMA MURO.....**APPLICANT/INTENDED
APPELLANT*****

AND

- 1. NATIONAL INSTITUTE FOR
MEDICAL RESEARCH
(Acronomy NIMR)***
- 2. ATTORNEY GENERAL***

.....RESPONDENTS

***[Intended Appeal from the decision of the High Court of
Tanzania Labour Division at Mwanza (Madam Jusitce A. C.
Nyerere) **dated 21/07/2015** in Labour Dispute No. 1 of
2014]***

NOTICE OF APPEAL

***[Made under Rule 83(1) of the Tanzania Court of Appeal
Rules GN 368 of 2009]***

*TAKE NOTICE that the above-mentioned "**Applicant**" being dissatisfied with the above-mentioned decision of the Madam Justice A.C. Nyerere given on the **21st day of July, 2014**, intends to appeal to the Court of Appeal of Tanzania against the whole of the said decision."*

Once again, Mr. Matata said the defects are minor. They do not go to the root of the appeal. He specifically made reference to the date of the decision. He said it is known as shown in the preamble so to speak to the notice of appeal. He urged the Court not to be bogged down with technicalities instead of dealing with substantive merit of the appeal.

In response to Mr. Matata's reply and the defects pointed out, Mr. Merumba said the Notice of Appeal did not conform to Form D. The appeal should be dismissed with costs.

We start with the point of objection raised by the respondents.

Mr. Matata argued with force that the proper title of the Court in terms of Article 117 of The Constitution as well as section 3 of the AJA is the Court of Appeal of the United Republic of Tanzania. And that the same

could be referred in short as The Court of Appeal. He however, admitted the title to contain some errors as indicated above.

Article 117 (1) of The Constitution reads as follows;

"117 (1) There shall be a Court of Appeal of the United Republic of Tanzania (to be referred to in short as "the Court of Appeal") which shall have the jurisdiction of the Court of Appeal as provided in this Constitution or any other law."

Whereas section 3 of the AJA provides as follows:-

"In this Act, unless the context requires otherwise.

"Court of Appeal" means the Court of Appeal of the United Republic of Tanzania established by "section" 68A [Now Article 117] of the Constitution of the United Republic of Tanzania, 1977."

Having examined the Notice of Appeal and having also read the above provisions, we entirely agree with Mr. Matata that there is a substantial compliance with Form D of the First Schedule of Rule 83 (6) of the Rules pertaining to the title of the Notice of Appeal notwithstanding some typing

errors. The errors are not fundamental as the Court in which the appeal was filed is properly cited.

The case cited by Mr. Merumba as correctly pointed out by Mr. Matata are distinguishable to the present case. In **M/s Brazafric case** the title of the Court was referred as the "Court of Appeal of Mwanza". This Court said:-

"Such a Court does not exist. It is evident that it does not conform to the format provided in Form D."

The appeal was struck out for being incompetent.

In **Director TOS Filling Station case** the Court struck out the appeal as the title of the Court was referred as "In the High Court of Tanzania Labour Division" and the notice of appeal shows it was signed by "the advocate for the respondent" instead of the appellant. The Court said as follows:-

"Taking into account that the notice of appeal is wrongly titled and wrongly signed as indicated earlier, the same is fundamentally defective."

Since the only query in the present case is for the title of the Court to have been cited in full which we have said constitutes substantial compliance, we are justified in agreeing with Mr. Matata that those cases are distinguishable. It is crystal clear, therefore, that the objection raised by the respondents has no leg to stand on. We dismiss it.

We now turn to the three defects pointed out by the Court. Our reading and understanding of sub-Rule 6 of Rule 83 of the Rules is that in order for a notice of appeal to be proper in law, it must substantially conform to Form D in the First Schedule of the Rules. The word substantially does not mean to reproduce Form D word by word. Rather it should contain in large amount essential features of Form D. Having gone through Form D, it is our considered view that a notice of appeal worthy a name must contain the following features namely, **one**, the title of the Court in which the appeal is preferred. **Two**, the proper names of the parties. **Three**, the name of the judge who handed down the decision. **Four**, the date of the decision. **Last but not least**, the signature of the appellant or his advocate. The question for decision and determination in this case is whether the "appellant" has filed a proper notice of appeal as per the dictates of the law.

We have pointed out three defects in the notice of appeal. All the three defects as explained above, are essential features which ought to have been embodied in a notice of appeal. We are of the settled view that the notice of appeal does not conform to the format provided in Form D as mandatorily required by Rule 83 (6) of the Rules. A notice of appeal which does not substantially conform to Form D in the First Schedule in the Rules is incurably defective. We are unable to go along Mr. Matata who said the defects are minor.

In fine, since the notice of appeal is incurably defective, the appeal has no leg to stand on. The same is struck out. Since these defects have been raised by the Court, we make no order as to costs.

It is so ordered.


DATED at **MWANZA** this 7th day of December, 2017.

B. M. LUANDA
JUSTICE OF APPEAL

B. M. MMILLA
JUSTICE OF APPEAL

R. K. MKUYE
JUSTICE OF APPEAL

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


E. Y. MKWIZU
DEPUTY REGISTRAR
COURT OF APPEAL