

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

**(CORAM: MBAROUK, J.A., BWANA, J.A., And MASSATI, J.A.)**

**CRIMINAL APPEAL NO. 81 OF 2011**

**BERNARD BALELE.....APPELLANT**

**VERSUS**

**THE REPUBLIC.....RESPONDENT**

**(Appeal from the decision of the High Court of Tanzania at Mwanza)**

**(Nyangarika, J.)**

**dated the 8<sup>th</sup> day of December, 2010**

**in**

**Criminal Appeal No. 79 of 2010**

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**JUDGMENT OF THE COURT**

**11 & 14 March, 2013**

**MBAROUK, J.A.:**

In the District Court of Geita at Geita, the appellant, Bernard Balele, was charged with the offence of rape contrary to sections 130 and 131 of the Penal Code Cap. 16 R.E. 2002. He was convicted and sentenced to life imprisonment with an order to pay compensation of shs. 100,000/= (one hundred thousand) to the victim (PW1). His appeal before the High Court (Nyangarika, J.) was dismissed for not being properly before the Court. Dissatisfied, he has now come before this Court.

The appellant, preferred three grounds of appeal, but we think they can boil down to only one ground of complaint, namely: -

- *That, the Honourable High Court Judge erred in law by dismissing the appellant's appeal without determining the appeal on merit.*

At the hearing, the appellant appeared in person unrepresented, whereas the respondent/Republic was represented by Mr. Paschal Marungu, learned State Attorney. The appellant had nothing to elaborate and left to the learned State Attorney to respond to the grounds of appeal.

On his part, the learned State Attorney from the outset supported the appeal. He submitted that, after the appellant was dissatisfied with the decision of the trial court, he filed his petition of appeal to the High Court. However, the petition of appeal was found to be defective for having different dates of when it was presented for filing and furthermore it had no signature of the appellant. For those irregularities therein, the High Court found the petition of appeal not properly before the Court, hence dismissed it, said the learned State Attorney. He added that as the appeal was not heard

In the instant case, we are increasingly of the view that, since the High Court had found that the appeal was incompetent it ought to have struck it out instead of dismissing it. In the circumstances of the case stated herein above, we are constrained to allow the appeal. In the event, we step into the shoes of the High Court and allow the appellant to lodge a fresh petition of appeal at the High Court within thirty (30) days from the date of this decision. It is so ordered.

DATED at MWANZA this 12<sup>th</sup> day of March, 2013.


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

S. J. BWANA  
**JUSTICE OF APPEAL**

S. A. MASSATI  
**JUSTICE OF APPEAL**

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



  
P. W. BAMPIKYA  
**SENIOR DEPUTY REGISTRAR**  
**COURT OF APPEAL**