

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

(CORAM: MBAROUK, J.A., MASSATI, J.A., And MUSSA, J.A.)

CRIMINAL APPEAL NO. 228 OF 2013

ABEID S/O SEIFAPPELLANT

VERSUS

THE REPUBLIC RESPONDENT

(Appeal from the Decision of the High Court of Tanzania at Tabora)

(Lukelelwa, J.)

Dated the 25th day of June, 2013

in

Criminal Appeal No. 126 of 2010

RULING OF THE COURT

18th & 20th June, 2014

MUSSA, J.A.:

At the hearing of the appeal, the appellant entered appearance in person, unrepresented. The respondent Republic had the services of Mr. Edward Mokiwa and Mr. Miraji Kajiru, both learned State Attorneys. From the very outset, we asked the learned State Attorneys to first address us on the competency of the appeal, particularly, with regard to an apparent infraction on the Notice of Appeal. As it turns out, the decision of the High Court which is desired to be impugned was partly titled: "*(DC) CRIMINAL APPEAL NO. 126 of 2010*"; but, on the contrary, the Notice of Appeal

lodged by the appellant indicates that he intends to challenge a decision of the High Court comprised in "*Criminal Appeal No. 126 of 2012*". Thus, it is beyond question that the Notice of Appeal wrongly cites the year when the decision was pronounced.

Mr. Mokiwa, who addressed us on the issue, advised that on account of the wrong citation, the Notice of Appeal is incurably defective and, for that matter, what is before us is not a properly constituted appeal. In sum, the learned State Attorney urged that the only option open to the Court is to strike out the purported appeal.

When asked to make a reply, the appellant, quite understandably, could not give an input on the legal consequences of mishap. All he pleaded was for the Court to take into consideration that as a prisoner, he is on the receiving end, as the Notice was actually prepared by prison authorities of which he, however, admittedly thumbprinted.

For our part, we should clearly express that upon numerous authorities, it is now well settled that it is imperative 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. Such is the mandatory requirement comprised under Rule 68(2) of the Tanzania Court of Appeal Rules, 2009 ("*the Rules*"). In the Criminal Appeal No. 156 of 2012 – **Elia Masema Kachala and two Others Vs Republic**, (unreported) this Court expounded:-

*"For a notice of appeal to this Court to be valid, it is mandatory that it must indicate not only the date of the challenged judgment and the name of the trial/appellate judge/magistrate, but also the trial/appellate court and **the correct registration number of the case/appeal in the lower court**".*
[Emphasis supplied].

To this end, it is quite obvious that the appellant did not meet the requirement with respect to indicating the correct registration numbers of the case to be appealed against. In the result, we fully subscribe to the

advice of the learned State Attorney and, accordingly, the purported appeal which is before us is struck out under Rule 4(2) (a) of the Rules.

DATED at TABORA this 19th day of June, 2014.

M.S. MBAROUK
JUSTICE OF APPEAL

S.A. MASSATI
JUSTICE OF APPEAL

K.M. MUSSA
JUSTICE OF APPEAL

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




E. Y. MKWIZU
DEPUTY REGISTRAR
COURT OF APPEAL