

IN THE COURT OF APPEAL OF TANZANIA

AT MTWARA

(CORAM: KIMARO, J.A., KAIJAGE, J.A. And LILA, J.A.)

CRIMINAL APPEAL NO. 158 OF 2013

KASSIM MOHAMED SELEMAN.....APPELLANT

VERSUS

THE REPUBLIC.....RESPONDENT

(Appeal from the conviction of the High Court of Tanzania at Mtwara)

(Mipawa, J.)

dated the 17th day of December, 2012

in

Criminal Appeal No. 71 of 2011

RULING OF THE COURT

18th & 22nd July, 2016

KAIJAGE, J.A.:

In the District Court of Kilwa at Masoko, the appellant was arraigned for rape contrary to section 130(2) (b) and 131(1) of the Penal Code. Following a full trial, he was found guilty and convicted of attempted rape, an offence created under section 132(1) of the Penal Code. He was consequently sentenced to thirty (30) years imprisonment.

Dissatisfied, the appellant unsuccessfully appealed to the High Court which sustained the thirty (30) years term of imprisonment, but substituted the conviction of attempted rape with one of rape. Still aggrieved, he has now come to this Court for a second appeal predicated upon six points of grievances comprised in the memorandum of appeal.

Before us, the appellant appeared in person, unrepresented. The respondent Republic had the services of Mr. Ladislaus Komanya, learned Senior State Attorney.

When the appeal was called on for hearing, we asked the parties to address us on the competence or otherwise of the present appeal, the notice of appeal, appearing at page 46 of the record, having falsely stated the nature of the appellant's conviction.

Addressing the issue we raised, Mr. Komanya hastened to correctly point out that the High Court, on appeal, ultimately convicted the appellant of **rape** contrary to sections 130(2) (b) and 131(1) of the Penal Code, but the notice of appeal as lodged on 18/12/2012 shows that the appellant is appealing against the conviction of **attempted rape** contrary to section 132(1) of the Penal Code. Since under Rule 68(2) of the Tanzania Court of

Appeal Rules, 2009 (the Rules), it is a mandatory requirement for the notice of appeal to state, among other things, the **nature of conviction**, failure to do so renders the appeal incompetent, he said. He finally implored us to strike out the appeal.

The appellant readily conceded the patent defect in the notice of appeal he lodged on 18/12/2012.

With respect, we are in agreement with both Mr. Komanya and the appellant. On the strength of the unbroken chain of various decisions of this Court, it is now settled that it is a mandatory requirement for the notice of appeal, which institutes a criminal appeal, to state correctly the nature of the conviction, sentence, order or finding of the High Court against which it is desired to appeal. (See, for instance, **MAJID GOA VEDASTUS vs REPUBLIC**; Criminal Appeal No. 268 of 2006 (unreported). To the extent that the notice of appeal herein misinforms about the nature of the conviction, we hold that the same is incurably defective and the present appeal is, consequently, rendered incompetent.

Accordingly, we strike out this purported appeal. The appellant is at liberty to access the Court, once again, subject to the laws of limitation.

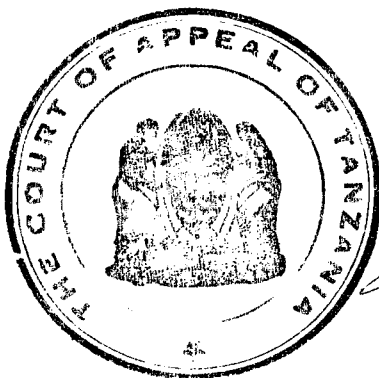
DATED at MTWARA this 20th day of July, 2016.


N.P. KIMARO
JUSTICE OF APPEAL

S.S. KAIJAGE
JUSTICE OF APPEAL

S.A. LILA
JUSITCE OF APPEAL

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




E.Y. MKWIZU
DEPUTY REGISTRAR
COURT OF APPEAL