

TANZANIA / JUDGMENT

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1 January 2015

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"\.' 111 \..JI!, IN THE COURT OF APPEAL OF TANZANIA AT TABORA CRIMINAL APPEAL NO. 129 OF 2015 BETWEEN CHARLES RAMADHANI ... APPELLANT VERSUS THE RE PU BLIC-----RESPON DENT (Appeal from the decision of the High Court of Tanzania at Tabora) (Rutakangwa, I) In Criminal Appeal No. 64 of 2001 Dated 29 th Day of November, 2002 LEGAL OPINION Competence of the appeal. This emanates from the judgment of the High Court in Criminal Appeal No 64 of 2001. The appellant was dissatisfied, since he didn't file notice of appeal within prescribed time vide Misc. Criminal Application No 8 of 2014 in the High Court at Tabora, he was granted leave to file a notice of appeal out of time. After being granted the leave, timely he filed the notice of Page 1 of 6 II., appeal on 5/8/2015. On 23/9/2019 the appellant filed memorandum of appeal. This appeal is incompetent before Court on ground there is no record in terms of Rule 71(4) of the Court of appeal Rule. As it appears in the record there is no, charge sheet, proceedings, judgment both of the trial Court and the High Court.

- Defects Noted Incomplete record.
 - The brief facts of the case As stated herein above, the appellant is appealing against sentence· and conviction of the judgment of the High Court in Criminal Appeal No 64 of 2001. According affidavit sworn by deputy registrar of the High Court at Tabora one Beda Robert Nyaki, he deponed that he has involved other stockholders such as Police, Prison, the office of the public prosecution, and the appellant for the purpose of reconstructing the record but in vain. The appellant has raised following grounds of appeal to support his appeal to this Court; Page 2 of 6
1. That, the loss of records of proceedings and judgement of both the trial and first appellate Court deprived the appellant, having lost the presumption of innocence following his conviction, the ability to prove that the two courts below convicted him with errors
 2. That, the records show that the appellant as engage in reconstruction of the lost records.
 3. That, there is indication that the charge preferred against appellant was defective as it can be discerned from the conviction form (warrant of Commitment) in that, the charge preferred against the appellant was under section 130 and 131 of the Penal Code, Cap 16 as amended by section 5 and 6 of SOSPA No. 4 of 1994 without specifying under which subsection and/or sub item the offence was of rape was premised, thus, not accorded a fair

trial. The appellant is asking this Court to quash the conviction and set aside the sentence and order the appellant be released from the custody.

- Legal Opinion As I have intimated herein above in this appeal there is neither charge, proceedings, judgment of the trial Court, nor proceedings, judgment of the first appellate High Court, the only available document is proceedings and order for extension of time to notice of appeal out of time. In the absence of those I will Page 3 of 6 be not in a position of opining to the grounds of appeal raised by the appellant. Instead, I will give opinion as to the way forward. In Kubezya John V. Republic Criminal Appeal NO. 488 OF 2015 CAT (unreported) that case was originating from the District Court. The Court faced with missing records, documents such as the charge sheet and the proceedings in the High Court in the appeal together with its judgment were completely missing. Efforts were made by the registrar of the High Court and other stakeholders but fruitless. In resolving the challenge, the Court decided to proceed with the available documents. In Nasoro v. Republic, Criminal Appeal No. 404 of 2015 (both unreported) in that the records were missing and the only efforts made by the registrar is to look for records in the Court's registries. The Court had this to say 'We think that any loss or misplacement of any court record or part of court proceedings is a serious matter that requires Deputy Registrars of the High Court to not only particularize the concrete efforts that they have made to trace back or restore the missing recant but to show what concrete efforts beyond mere words they have taken to Page 4 of 6 reconstruct or restore the record before scheduling the matter for hearing by either High Court or this Court' Each case has to be decided according to the circumstances of the case, that means there is no general rule. In insisting about the reconstruction of the record the Court in Nasoro v. Republic, Criminal Appeal No. 404 of 2015 observed that, Where specific circumstances so require, reconstruction of the missing record should also involve close interview of the appellant, sourcing documents From the custody or possession of the police investigations Files, and From Officers-in-Charge of Prison who at diverse times, held the appellant in their respective custody. (emphasis added) From the record, it appears efforts were not made by the registrar such as to have interviewed the appellant and other stakeholders. I think a mere requesting vide letter is not enough.
- Conclusion Page 5 of 6

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Prepared on 14 October 2026 · Esheria