

TANZANIA / JUDGMENT

fabian buberwa vs leonida daniel

2018 tzhc 2679 27 june 2018

COURT
TZHCDECIDED
27 June 2018

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IN THE HIGH COURT OF TANZANIA AT BUKOBA PC. CRIMINAL APPEAL NO. 7 OF 2017 (Arising from RM Criminal Application No. 14 of 2016 and Criminal Application No. 46 of 2014 D/Court Bukoba from Criminal Case No. 38 of 2014 Karabagaine Primary Court) FABIAN BUBERWA-----
—..... APPELANT VERSUS LEONIDA DANIEL..... RESPONDENT

JUDGMENT

27/06/2018 BONGOLE, J. The appellant Fabian Buberwa is complaining before this court faulting the Ruling of the District Court in District Court of Bukoba Criminal Application No. 14 of 2016 where his application was dismissed for wrong citation of the enabling provision. I have a chance of glancing on the impugned ruling and the proceedings in District Court Criminal Application No. 14 of 2016 where I find that the said application was made under Section 321 (1) of the Magistrates Court Act (Cap. 11 RE: 202). The trial magistrate observed that such provisions of the law do not exist and proceeded in dismissing the application. It is obvious and trite that such provisions of the law cited by the appellant do not exist as correctly pointed by the trial magistrate. There are plethora of decisions of the CAT that non citation or wrong citation of the law renders the application incompetent. The redress to an incompetent application is that of striking it out instead of dismissal. Wherefore that been observed, the application before the District Court was incompetent for wrong citation of the enabling provision of the law. This appeal is therefore with no merit and accordingly it is dismissed. No order as to costs taking into account the extenuating factors and the age of the parties. Accordingly ordered. 27/6/2018

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