

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

(CORAM: RUTAKANGWA, J.A., LUANDA, J.A., And ORIYO, J.A.

CRIMINAL APPEAL NO. 97 OF 2009

ISRAEL ABRAHAM.....APPELLANT

VERSUS

THE REPUBLICRESPONDENT

**(Appeal from the Judgement of the High Court of Tanzania
at Arusha)**

Mmila, J.)

Dated 12th day of December, 2008

In

Criminal Appeal No. 180 of 2007

.....

RULING OF THE COURT

21st & 25th November, 2011

ORIYO, J.A.:

On the morning of 2nd July 2006, at around 8:25a.m, the complainant, one Agnes Leornad (PW1), was on her way to church. The appellant, Israel Abraham who was walking behind her caught up with her, got hold of her and threatened to stab her with a knife if she continued screaming. Then he dragged her into a nearby maize farm where he struck

at her legs and she fell down. Immediately thereafter the appellant pulled out from her finger and stole her gold wedding ring together with a pair of gold earrings she was wearing. As the complainant laid on her back, the appellant raised her dress and piece of kitenge to her chest, pulled down her underpants, took out his penis, lied on her chest and before he could penetrate the penis into the complainant's vagina, he fled upon seeing two men approach the scene, taking the complainant's handbag with him. PW2 Joshua Kiliko, was one of the two men who had arrived at the scene and found the appellant on the chest of the complainant. He testified that upon seeing them, the appellant picked up a bag and fled. The matter was reported to the police where PW1 was issued with a PF3 and went to a hospital.

PW3, the "Kitongoji" Chairman, Lawrence Mshomba, followed up the appellant to his home, in vain. He was not there until 6th July, 2006, at 4 a.m. when he found him at home. He was arrested and subsequently charged with two counts of Armed Robbery contrary section 287A of the Penal Code, Cap 16 and Attempted Rape contrary to section 132 (1) and (2) of the Penal Code, Cap 16. In Criminal Case No. 754 of 2006 in the

District Court of Arusha the appellant denied both counts. At the end of a full trial, he was convicted as charged on the first count. On the second count he was convicted of a lesser offence of Sexual Assault on woman, contrary to section 135 (1) of the Penal Code.

The appellant was aggrieved by the convictions and sentences but his appeal to the High Court was unsuccessful. Now he has come to this Court for a second appeal.

When the appeal was called on for hearing, the appellant had no services of an advocate, he appeared in person. The respondent/Republic was represented by Mr. Zakaria Elisaria, learned State Attorney.

The learned State Attorney drew our attention to the Notice of Appeal on record, which was against a decision of the High Court in Criminal Appeal No. 180 of 2008. But the Criminal Appeal complained of in the High Court was No. 180 of 2007, so stated the learned State Attorney.

He submitted that the Rule 61 (1) of the then Court of Appeal Rules, 1979, (the rules), the appellant has not filed a notice of appeal against Criminal Appeal No. 180 of 2007. He prayed that the appeal be struck out.

In response, the appellant objected and insisted that the appeal he is complaining against in the High Court was Criminal Appeal No. 180 of 2008. He urged us to exercise leniency because the High Court file on the appeal has always been the same, that is Criminal Appeal No. 180 of 2008.

We have carefully studied the record of appeal and have confirmed that the notice of appeal lodged in this Court by the appellant on 15th December, 2008, is challenging the decision of the High Court in Criminal Appeal No. 180 of 2008. In order to do justice to the appellant, Israel Abraham, we have also perused the High Court Register for criminal appeals originating from district courts to the High Court as is the case with the present appeal. Our finding from the Register is that the last criminal appeal before the High Court for the year 2008 was Criminal Appeal No. 107 of 2008. The appellant in that appeal was **Hamida Ramadhan vs**

Republic. For the sake of completeness, there was no Criminal Appeal No. 180 of 2008 originating from a district court to the High Court sitting at Arusha because the last number was Criminal Appeal No. 107.

In the circumstances, what was stated by Mr. Elisaria, learned State Attorney, is correct, according to the High Court and this Court's records. The appellant's notice of appeal should have cited the High Court decision complained of as High Court **Criminal Appeal No. 180 of 2007**. The notice of appeal in criminal appeal no. 180 of 2008 filed by the appellant is defective for citing a wrong High Court decision. And as correctly stated by the learned State Attorney there is no competent appeal instituted in this Court against Criminal Appeal No. 180 of 2007.

As it is a notice of appeal which institutes a criminal appeal in this Court, in terms of rule 61 (1) of the rules, the purported appeal is hereby struck out for lack of a valid notice of appeal.

DATED at **ARUSHA** this 22nd day of November, 2011

E. M. K. RUTAKANGWA
JUSTICE OF APPEAL

B. M. LUANDA
JUSTICE OF APPEAL

K.K. ORIYO
JUSTICE OF APPEAL

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




Z. A. Maruma
DEPUTY REGISTRAR