

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

**(CORAM: RAMADHANI<sup>At</sup> C.J.; MUNUO, J.A; And MJASIRI, J.A.)**

**CRIMINAL APPEAL NO. 211 OF 2004**

**BETWEEN**

**SELEMANI RASHIDI                      ...              APPELLANT**

**AND**

**THE REPUBLIC                                      ...              RESPONDENT**

**(An Appeal from the Decision of the High Court of Tanzania,  
at Mtwara)**

**(Mandia, J.)**

**dated the 9<sup>th</sup> day of April, 2003**

**in**

**Criminal Appeal No. 66 of 2002**

**JUDGMENT OF THE COURT**

**26 & 27 November, 2009**

RAMADHANI, C. J.:

The District Court of Lindi was satisfied that the appellant, Selemani Rashidi, was guilty of raping a girl aged five years called FS f c/ss 130 and 131 of the Penal Code Cap 16 [R. E. 2002], on 16<sup>th</sup> November, 2001, at Nyangamala Village, Lindi and sentenced him to life imprisonment. His appeal to the High Court (MANDIA, J., as he then was) was barren of results. He has come before us in person protesting his innocence. The respondent/Republic was represented by Ms. Evetta Mushi, learned State Attorney.

The appellant was a labourer of SH (PW 1), the father of the girl, and JY (PW 3), the wife of PW 1 and the mother of the girl. On the fateful day PW 3 left home and went to shamba leaving the girl with the appellant. When she returned she found the girl crying complaining that she had pains in the anus. PW 3 examined her and found that her private parts were injured. She reported the matter to the village authorities and took the girl to a hospital. She produced PF 3 which was taken as Exh. A. PW 1 was away from home for a longer period and returned three days after the incident. SM (PW 2), a niece of PW 3 and a girl of seven years ,gave a similar story as PW 3.

The appellant had a number of grounds of appeal which were supported by Ms Mushi. One of the grounds was that the appellant was not given his right to object to the production and admission of the PF 3 as an exhibit. Ms. Mushi asked the Court to expunge Exh. A. We agree with both parties that PF 3 was admitted in violation of s. 240 of the Criminal Procedure Act

which requires that the appellant be informed of his right to require the doctor who prepared PF 3 to be called to testify. That was not done. We hereby expunge Exh. A.

We also agree with Ms. Mushi that after expunging Exh. A, what is left is circumstantial evidence that the girl was left with the appellant at home. There is nobody who saw what happened. PW 2 and PW 3 came back home to find the girl crying complaining that she had pain in her anus. PW 3 examined her private parts and confirmed that she was injured. The question is who did it? The girl told both of them that it was the appellant who did it by inserting a cassava stick into her anus. At best that was hearsay since the girl was brought to the court but was not produced as a witness to testify.

We think that Ms. Mushi was correct when she submitted that the appellant was not the only person who had access to the girl.

We find that there is absolutely no evidence to tie down the appellant. We, therefore, allow the appeal, quash the conviction, set aside the sentence and order the immediate release of the appellant unless he is legally detained for any other matter.

DATED in MTWARA, this 27<sup>th</sup> day of November, 2009.

A. S. L. RAMADHANI  
CHIEF JUSTICE

E. N. MUNUO  
JUSTICE OF APPEAL

S. MJASIRI  
JUSTICE OF APPEAL

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

(KITUSI)  
SENIOR DEPUTY REGISTRAR