IN THE COURT OF APPEAL OF TANZANIA
AT ARUSHA

(CORAM: MSOFFE, J.A., KILEO, J.A., And ORIYO, J.A.)

CRIMINAL APPEAL NO. 307 OF 2007

THE DIRECTOR OF PUBLIC PROSECUTIONS........................APPELLANT

VERSUS

MOSHI BOAY @ GWANGWAY...RESPONDENT

(Appeal from the decision of the High Court of Tanzania at Arusha)

(Bwana, J.)

dated the 1st day of August, 2007
in
HC. Criminal Appeal No. 65 of 2006

JUDGMENT OF THE COURT

27 & 31 August, 2010

MSOFFE, J.A.:

In determining this appeal we invoked the provisions of **Rule 80 (6)** of the **Tanzania Court of Appeal Rules, 2009** after we were satisfied that the respondent was duly served but did not appear for reasons which were not disclosed to us.

The District Court of Arusha (F. J. Mushi, RM.) convicted the appellant of an unnatural offence contrary to **section 154(1) (b)** of

the **Penal Code** as amended by **section 16** of the **Sexual Offences Special Provisions Act No. 4 of 1998** after it was satisfied that the evidence on record established that on 30th May, 2005 at about 16.00 hours at Kambi ya Nyoka village within Karatu District in Arusha Region the said appellant had carnal knowledge of an animal to wit a female goat. The said court sentenced the appellant to a term of thirty years imprisonment. On appeal, the High Court (Bwana, J. as he then was) upheld the conviction. As for sentence, although there was no specific ground of appeal on it the judge nonetheless set aside the sentence of thirty years imprisonment and substituted it with one of three years imprisonment. This is an appeal against sentence.

Mrs. Neema Joseph Ringo, learned Principal State Attorney appearing on behalf of the respondent Republic, argued before us that in view of the clear provisions of section **154 (1) (b)** of the Penal Code, as amended, the judge on first appeal ought not to have disturbed the sentence of thirty years imprisonment meted out on

the appellant by the trial District Court. With respect, we agree with her.

In dealing with the sentence the judge quoted the relevant provisions of section **154(1) (b)** and then specifically underlined the words "imprisonment for a term of not less than thirty years" appearing under the **section** and then he went on to reason as follows: -

> *"The underlined part of the above provision, in my view, does not impose mandatory sentence of thirty years. The circumstances of each case allow the court to impose a sentence serious enough to cater for the need apparent.*

Then he continued: -

> *... my views are further supported by the real intention of enacting this law. It is provided thus: -*
>
> > *An act to amend several written laws, making special provisions in those laws with regard to sexual and other offences to further safeguard the*

> *personal integrity, dignity, liberty and security of women and children.*

Then the judge stated in conclusion thus: -

> *It is apparent therefore that this Act is meant to protect women and children. Although the offence with which the appellant has been included, in my view, it should have not been so included...*

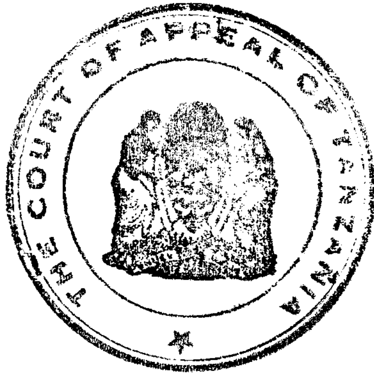
It occurs to us that **section 154(1) (b)** is very clear. A person who has carnal knowledge of an animal is liable to imprisonment for life and in any case to imprisonment for a term of not less than thirty years. The catch-words under the section are "imprisonment for a term of not less than thirty years". So, once the offence is proved, the convicting court is enjoined to impose a sentence of not less that thirty years imprisonment. There is, therefore, no discretion to impose a lesser sentence as the judge appeared to think.

It is true, in our view, that the intention of enacting **Act No. 4 of 1998** was as quoted by the judge above. However, the words "safeguard the personal integrity, dignity liberty and security of women and children" should not be read in isolation of the other words in the stated intention. The word **"sexual"** in the said intention is meant to cater for other situations such as the one at hand where the respondent was convicted of having **sexual** intercourse with a goat. At any rate, we do not think that it was ever intended by the Legislative that the stated intention should override the clear and express provisions of the Penal Code as amended by the **Act.**

There is merit in the appeal. We hereby allow it. We accordingly set aside the decision of the High Court. In its stead we restore the decision of the District Court. The respondent, who we understand is out of prison, is to be arrested and committed to prison to serve the remainder portion of the sentence of thirty years imprisonment imposed on him by the District Court of Arusha.

DATED at **ARUSHA** this 30th day of August, 2010.

J. H. MSOFFE
JUSTICE OF APPEAL



E. A. KILEO
JUSTICE OF APPEAL

K. K. ORIYO
JUSTICE OF APPEAL

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

(E. Y. MKWIZU)
DEPUTY REGISTRAR
COURT OF APPEAL