

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

(CORAM: MSOFFE, J.A, BWANA, J.A., And MJASIRI, J.A.)

CRIMINAL APPEAL NO. 496 OF 2007

MIBULO LAURENT APPELLANT

VERSUS

THE REPUBLIC RESPONDENT

**(Appeal from the decision of the High Court
of Tanzania at Bukoba)**

(Lyimo, J.)

**dated the 20th day of November, 2007
in
Criminal Appeal No. 75 of 2006**

JUDGMENT OF THE COURT

29 February & 2 March 2012

MJASIRI, J.A.:

In the District Court of Ngara, the appellant Mibulo Laurent was charged with and convicted of the offence of rape contrary to Section 130 (1) and (2) (e) and Section 131 (2) (a) of the Penal Code Cap 16, R.E. 2002 as amended by the Sexual Offences Special Provisions Act No. 4 of 1998. The appellant was sentenced to 30 years imprisonment.

Being aggrieved with the decision of the District Court, he appealed to the High Court against both conviction and sentence. His appeal to the High Court was unsuccessful, hence this second appeal to this Court.

The case for the prosecution was that on August 22, 2000 at about 18.30 hours at Lukole (B) Camp, within Ngara District in Kagera Region the appellant unlawfully had carnal knowledge of one Wimana d/o Clodetha, a girl of 15 years, without her consent.

The appellant did not dispute the incident having taken place. However, his defence was that he did not rape PW1 but had sex with her with her consent.

The prosecution called three witnesses in support of its case. PW1 narrated the sequence of events leading to the rape. Her account was supported by the evidence of PW2 and PW3. The trio was returning home when the incident happened.

The appellant filed three grounds of appeal which can be summarized as follows:-

- 1. Section 240 (3) of the Criminal Procedure Act was not complied with.*
- 2. The learned High Court Judge misdirected himself on the non requirement of consent when the age of the victim was not established.*
- 3. The learned High Court Judge misdirected himself in holding that the appellant was able to follow the proceedings in Kiswahili, a language he did not understand.*

At the hearing of the appeal, the appellant appeared in person and was unrepresented and the respondent Republic was represented by Mr. Seth Mkemwa, learned Senior State Attorney.

Mr. Mkemwa supported the conviction. In arguing ground No.1, on the non-compliance with section 240 (3) of the Criminal Procedure Act Cap 20, R.E. 2002, he readily conceded that the PF.3

report cannot be relied upon and asked the court to expunge it from the record.

With regard to ground No. 2 on the failure by the trial court to establish the age of PW1 (the victim of rape), he submitted that there was no such requirement under the law.

In relation to ground No. 3 in respect of the inability of the appellant to follow proceedings because he did not comprehend Kiswahili (the language used in the trial as well as during the appeal), Mr. Mkemwa stated that the appellant did not raise this issue during the trial. The appellant was able to follow proceedings and to present his defence. He submitted further, that the High Court Judge took the trouble of verifying this during the hearing of the appeal and was satisfied that the appellant could follow the proceedings.

In relation to ground No.1, we entirely agree with the learned Senior State Attorney that there was non-compliance with Section 240 (3) of the Criminal Procedure Act. Given the established legal position on this matter we accordingly expunge the PF.3 report from

the record. See **Rahim Mohamed v R**, Criminal Appeal No. 234 of 2003 and **Kashana Buyoka v R**, Criminal Appeal No. 176 of 2003 CAT (both unreported).

With regard to the complaint by the appellant that he did not comprehend the Kiswahili language and could therefore not follow the proceedings, we are satisfied that this complaint is not supported by the evidence on record. The appellant entered his plea and presented his defence in Kiswahili in the District Court. The High Court Judge also made efforts to verify this complaint, and was satisfied that there was no basis for the said complaint. We have no cause to fault his finding on this issue.

Lastly, the age of the victim (PW1), was never disputed at the trial nor at the first appellate court. The issue relating to the victim's age is pivotal in this case. Whereas the appellant has alleged that there was consent, such consent cannot be obtained from a 15 year old. Therefore the appellant committed statutory rape under Section 130 (2) (e) of the Penal Code as amended, which provides as under:-

"(2) A male person commits the offence of rape if he has sexual intercourse with a girl or a woman under any of the following descriptions –

(e) with or without her consent when she is under eighteen years of age, unless the woman is his wife who is fifteen or more years of age and is not separated from the man."

However, given the evidence of PW1, PW2 and PW3 who witnessed the incident, and who called for help, that element of consent though not relevant, was not there in the first place. The appellant had chased PW1, PW2 and PW3, then grabbed PW1, undressed her and raped her.

This is a second appeal. The principles to be followed in dealing with the finding of facts and conclusions reached by the lower courts is clearly set out in various decisions of the Court. In **R v Hassan bin Said** (1942) 9 E.A.C.A 62, it was held that the Court of Appeal is precluded from questioning the findings of fact of the trial court, provided that there was evidence to support those

findings. See **R v Gokaldas Karji Karu and Another**, (1975) 11 EACA 116 and **Reuben Kardris s/o Karanja v R** (1950) 17 E.A.C.A. 146. See also **Salum Mhando v R** [1993] TLR 170. In this appeal we find no basis to interfere with the decision of the High Court.

In view of the reasons stated hereinabove we find no merit in the appeal. The appeal is hereby dismissed.

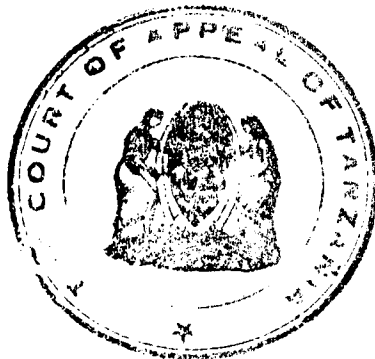
DATED at **MWANZA** this 1st day of March, 2012.

J.H. MSOFFE
JUSTICE OF APPEAL

S.J. BWANA
JUSTICE OF APPEAL

S. MJASIRI
JUSTICE OF APPEAL

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




(J.S. MGETTA)
DEPUTY REGISTRAR