

IN THE COURT OF APPEAL OF TANZANIA  
AT DODOMA

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

CRIMINAL APPEAL NO. 300 OF 2012

LUHINDA NJEMU ..... APPELLANT

VERSUS

THE REPUBLIC ..... RESPONDENT

(Appeal from the Decision of the  
High Court of Tanzania at Dodoma)

(Kwariko, J.)

dated the 25<sup>th</sup> day of May, 2005  
in  
Criminal Appeal No. 134 of 2011

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JUDGMENT OF THE COURT

20<sup>th</sup> & 25<sup>th</sup> March, 2013

LUANDA, J.A.:

The appellant LUHINDA s/o NJEMU was charged in the District of Court of Iramba at Kiomboi (Mrisho K. M-PDM) with rape contrary to sections 130(1) (2) (e) and 131(1) of the Penal Code, Cap. 16 R.E 2002. He was convicted on his own plea of guilty and sentenced to 30 years imprisonment and 12 strokes of the cane.

The prosecution had alleged that on 24<sup>th</sup> September, 2009 around 20.00 hours at Nyahaa village in Iramba District the appellant raped

KABULA D/O AMOS, a girl aged 13 years. His appeal to the High Court of Tanzania (Dodoma Registry) was dismissed. The learned judge was satisfied that the plea of the appellant was unequivocal and that the facts constitute the offence of rape. Undaunted, the appellant has come to this Court on second appeal.

Before us the appellant appeared in person unrepresented; whereas the respondent Republic was represented by Ms. Rosemary Shio, learned Senior State Attorney who resisted the appeal.

The appellant has raised six grounds in his memorandum of appeal which can be condensed into five grounds. One, the plea was equivocal. Two, the age of victim was not established to be 13 years of age. Three, no evidence was tendered that the victim was schooling. Four, no bruises were detected in the vagina of the victim of rape as per PF3. Lastly, the cautioned statement does not indicate the appellant committed rape.

We find it appropriate to travel through the record and see what transpired in the District Court. On 28/9/2009 when the charge was

read over and explained to the appellant who was asked to plead there to the appellant pleaded as follows:-

*It is true, I raped her at her home.*

The Court entered a plea of guilty. Then the facts were adduced by the prosecutor.

**FACTS BY PROSECUTOR**

*Your honour the accused in the dock is a resident of Nyahaa village while the complainant is a school girl of Nyahaa Primary School. On 24/9/2009 at about 20.00 hours the accused went to the girl's home in order to ask for fire-wood where he met the girl inside. The accused then forgotten (sic) the issue of firewood and have sexual intercourse with the girl. Before he finished his passion one Kwimba Salum arrived there with Naledie Nkungu the wife of the accused who found him having sexual intercourse with the girl. The accused was arrested and taken to Police Ibaga out Post. The complainant was given PF3 form for medical examination. The accused also wrote his statement where he admitted to commit the offence of rape.*

*I pray to produce the accused's statement and PF3 form as exhibit.*

**Court:** *(1) PF3 form is tendered and marked as Exhibit P1 (2). The accused statement is tendered and marked exhibit P2.*

**Court:** *Accused asked if he admits the facts.*

**Accused replies:** *I admit the facts they are correct and I felt shame when my wife came inside and found me having sexual intercourse with the girl.*

The court then convicted him with the offence he was charged and was sentenced accordingly.

When the appellant was called on to say something in connection with the grounds he had raised, he preferred to hear the respondent first.

As regard the first ground, Ms. Shio submitted that the appellant on his own volition pleaded guilty to the charge and admitted the facts adduced. The facts established the offence of rape. The plea of the

appellant, therefore, was unequivocal and not equivocal. Turning to the second ground Ms. Shio said the charge sheet indicates that the victim of rape was 13 years of age. If he the appellant felt that the victim was not of that age, he ought to have stated so or raised it. As regard to ground three whether the victim was schooling or not Ms. Shio submitted that that is immaterial. As to non detection of bruises in the victim's vagina, which is ground number four, she said that was not necessary. Turning to the last ground that is the cautioned statement to have not indicated the appellant had committed the offence, she said it does. In any case she said the evidence of PF3 and the cautioned statement could be expunged, the admission of facts of the offence carries the day. She prayed the appeal of the appellant be dismissed for lack of merits.

The appellant on the other hand said he did not admit the offence on his volition. He said Police persuaded or threatened him to do so. However, he was frank enough in saying he was raising this ground for the first time and in this Court.

From above, the crux of the matter in this appeal is whether the facts disclose the offence with which the appellant was charged. The

appellant was charged with rape of a girl under 18 years. The offence of rape when committed to girls under the age of eighteen years is complete when it is shown there was sexual intercourse (See s. 130 (2) (e) of the Penal Code). It is immaterial whether the girl under that age consented or otherwise.

In our case the appellant pleaded guilty to the charge of raping a girl of 13 years. The facts as reproduced above were adduced. The facts, adduced contain the essential ingredient of what we refer more often as statutory rape is there namely sexual intercourse. The appellant admitted to have been found in the physical activity of sex with the girl (*Flagrante delicto*).

Like the courts below we are satisfied that the facts adduced disclosed the offence of statutory rape of which the appellant unequivocally pleaded guilty. The conviction was properly entered. The grounds of appeal raised by the appellant including the detection of bruises in the victim's vagina; that whether the victim was schooling or not are not relevant at all. Indeed the conviction will also stand even without the cautioned statement or the PF3 tendered. Once it is shown,

as in this case, that the accused person pleaded guilty to a charge properly drafted, before a competent Court and the facts adduced disclose the offence of which he was charged, normally a conviction entered will not be easily disturbed by the higher court. We agree with Ms. Shio that the grounds raised are devoid of merits.

We dismiss the appeal in its entirety.

It is so ordered.

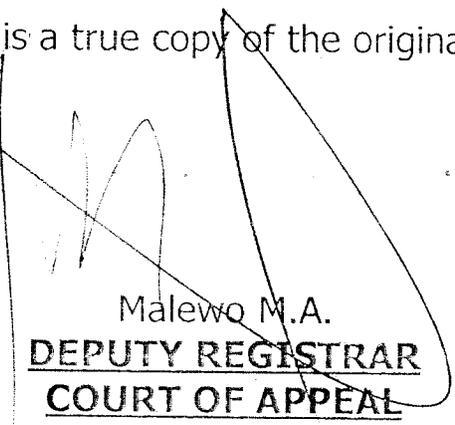
**DATED** at **DODOMA** this 22<sup>nd</sup> day of March, 2013.

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.

  
Malewo M.A.  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**