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

**(CORAM: RUTAKANGWA, J.A., MJASIRI, J.A., And JUMA, J.A.)**

**CRIMINAL APPEAL NO. 65 OF 2012**

**ANANIA BUKUKU ..... APPELLANT**

**VERSUS**

**THE REPUBLIC ..... RESPONDENT**

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

**(Mmilla, J.)**

**dated the 18th day of September, 2011**
**in**
**Criminal Appeal No. 50 of 2007**

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# JUDGMENT OF THE COURT

**6th & 11th June, 2013**

## MJASIRI, J.A.:

An incident of rape occurred at Ilomba area in Mbeya Region at around 16.00 hours on May 3, 2006. The appellant, Anania s/o Bukuku was alleged to have raped one Wambi d/o Mbwete. The appellant was subsequently charged and convicted of the offence of rape contrary to sections 130 and 131(1) of the Penal Code. He was sentenced to 30 years imprisonment and was ordered to pay Shs. 100,000/= compensation to the victim. Aggrieved by the conviction and sentence,

he unsuccessfully appealed to the High Court at Mbeya, (Mmilla, J.), hence this second appeal. The appellant denied any involvement in the commission of the rape.

The prosecution case was based on the evidence of the victim, PW1 and that of a cautioned statement made by the appellant, before a police officer, Detective Corporal Rodric (PW3).

The appellant preferred six (6) grounds of appeal which can be summarised as under:-

1. *The trial court and the High Court wrongly relied on the evidence of PW1 & PW2.*

2. *The cautioned statement made by the appellant was admitted contrary to the requirements under the law.*

3. *The PF. 3 report was admitted contrary to section 240(3) of the Criminal Procedure Act.*

4. *The charge of rape against the appellant was not proved beyond reasonable doubt.*

At the hearing of the appeal the appellant appeared in person and was unrepresented and the respondent Republic had the services of Ms. Catherine Gwaltu, learned State Attorney.

The appellant being a layman did not have much to stay during the hearing. He simply asked the Court to adopt his memorandum of appeal as part of his submissions.

Ms. Gwaltu on her part supported the conviction and sentence meted out to the appellant.

In relation to ground No. 1, she submitted that the evidence of PW1 was comprehensive. PW1 in her testimony established, the ingredients of rape.

(1) There was no consent.

(2) There was penetration.

She submitted further that the trial court found PW1 to be a credible witness. On the cautioned statement, the learned State

Attorney submitted that it was properly admitted in court. The appellant neither raised an objection nor cross examined PW3 on the cautioned statement.

In relation to the PF. 3 report she conceded that section 240(3) of the Criminal Procedure Act was not complied with. However she stated that the PF. 3 report was expunged by the High Court, and was not relied by the High Court in reaching its decision.

Lastly, on ground No. 4, Ms. Gwaltu submitted that the offence of rape was proved beyond reasonable doubt. The evidence of PW1 alone was enough to establish that the appellant committed the offence. However, PW1's evidence was also corroborated by the cautioned statement made by the appellant where he admitted to have committed the offence.

After carefully going through the record, the memorandum of appeal and the submissions made by the learned State Attorney we would like to make the following observations:-

In relation to the first ground of appeal, that the courts below wrongly relied on the evidence of PW1, Wambi Mbwete, we find that the complaint has no merit. It is true that the only evidence linking the appellant with the offence is that of PW1 and the cautioned statement of the appellant. However the trial court found PW1 to be a credible witness and relied on her testimony to ground a conviction. It is the trial court which is best placed to determine the credibility of a witness. The trial court had the opportunity to observe the demeanour of the witness. All the ingredients of rape were established in her evidence that is; there was no consent and there was penetration. See **Mathayo Ngalya @ Shabani v. Republic** Criminal Appeal No. 70 of 2006 CAT (unreported).

It is settled law that no specific number of witnesses is required to prove a case (Section 143 of the Evidence Act, Cap 6). What is important is the credibility of the witness. See **Yohanis Msigwa v. Republic** 1990 TLR 148. In cases of rape the best evidence is that of the victim herself. See **Selemani Makumba v Republic**, Criminal Appeal No. 94 of 1999 and In **Alfeo Valentino v Republic**, Criminal

Appeal No. 92 of 2006 CAT (both unreported). In **Godi Kasenegala v Republic** Criminal Appeal No. 10 of 2008 CAT (unreported), the Court reiterated the legal position and stated thus:-

> *"It is now settled law that the proof of rape comes from the prosecutrix herself."*

Section 127(7) of the Evidence Act (supra) provides as under:

> *"Notwithstanding the preceding provisions of this section, where in criminal proceedings involving sexual offence the only independent evidence is that of* ***a child of tender years or of a victim of the sexual offence****, the court shall receive the evidence, and may, after assessing the credibility of the evidence of the child of tender years or as the case may be the victim of sexual offence on its own merits, notwithstanding that such evidence is not corroborated, proceed to convict, if for reasons to be recorded in proceedings the court is satisfied that* ***the child of tender years or the victim of the sexual offence is telling nothing but the truth****."*
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> *Emphasis provided.*

In relation to ground No. 2, that the trial court and the High Court relied on the cautioned statement of the appellant which was wrongly admitted. The appellant confessed to have raped PW1 and did not raise any objection when his cautioned statement was read and subsequently admitted as Exhibit P.3. An accused person is required to object to the admissibility of a cautioned statement before it is admitted. See **Shihoze Seni and another v Republic** 1992 TLR 330. We are therefore of the considered view that Exhibit P3 was properly admitted.

In relation to ground No. 3, on the non compliance with section 240(3) of the Criminal Procedure Act, the PF. 3 report (Exhibit P1) was expunged from the record and was not relied upon by the High Court in upholding the conviction of the appellant. The appellant's argument is no longer valid. We therefore need not delve on it.

Lastly, on the fourth ground of appeal, that the charge of rape was not proved beyond reasonable doubt, we would like to state that after a careful analysis of the evidence on record, we are inclined to agree with the learned State Attorney that the charge against the appellant was

proved beyond reasonable doubt. The incident occurred during the day, and the appellant was well known to PW1. It is evident from the evidence that PW1 was raped and it was the appellant who committed the rape. We therefore have no reason to fault the findings of the two courts below.

In view of the foregoing reasons we find that this appeal lacks merit and it is hereby dismissed. It is so ordered.

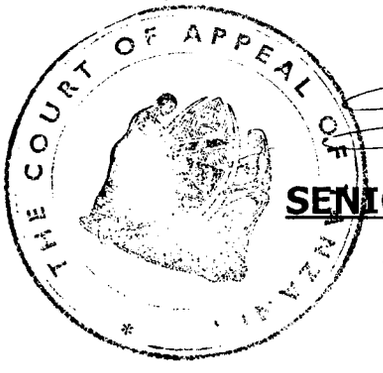
**DATED** at **MBEYA** this 10th day of June, 2013.

E.M.K. RUTAKANGWA
**JUSTICE OF APPEAL**

S. MJASIRI
**JUSTICE OF APPEAL**

I.H. JUMA
**JUSTICE OF APPEAL**

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




P.W. Bampikya
**SENIOR DEPUTY REGISTRAR**
**COURT OF APPEAL**