IN THE COURT OF APPEAL OF TANZANIA

AT DODOMA

(CORAM: KILEO, J.A., KIMARO,J.A., And MASSATI, J.A.)

CRIMINAL CASE NO. 141 OF 2013

ABDALLA H RAMADHANI.....APPELLANT

VERSUS

THE REPUBLIC.....RESPONDENT

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

(Shangali, J.)

dated 15th March, 2013

in

Criminal Appeal No. 88 of 2011

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JUDGMENT OF THE COURT

11th & 13th September, 2013

KIMARO, J.A.:-

On the morning of 22nd August, 2000 at 8.00 a.m. Violent Jackson, (PW1) a girl aged 17 years, the complainant in this case , was sent by her father to graze his cattle at the grazing fields. While on the grazing field, at about 11.00 am, Abdallah Ramadhani, the appellant in this case, who was also grazing his cattle in the same fields, went to her. The appellant told PW1 that "*Za kwako zimekwisha.*" Using his legs, the

appellant hit the complainant's legs, fell her down, cut the buttons of her skirt and removed her underpants. The appellant then unfastened his trouser and pulled it down. He then lied on top of PW1 who was lying with her face up. He inserted his penis into the complainant's vagina. He satisfied his desire, as he ejaculated twice. While this was taking place, the complainant was shouting for help. Paulo Mabadiliko, PW2 who also happened to be grazing his cattle in the same field, heard the complainant shouting for help. He went to the scene of crime where he witnessed the appellant having sexual intercourse with the complainant. However he could not render any assistance to PW1. The appellant cautioned him not to move near the scene of crime.

The appellant after he was through with the criminal act left the area leaving the complainant behind. She immediately reported the matter to her parents and the matter was reported to the police for the criminal process to take place. The appellant was then charged with commission of the offence of rape contrary to section 130 (1) (2) (e) and 131(1) of the Penal Code [CAP 16 R.E.2002]. Although the appellant admitted having sent his cattle to the grazing field on that day, he denied the commission of the offence. The District Court of Iramba at Kiomboi in which the

appellant was charged, was satisfied that the offence of rape was proved by the prosecution on the standard required, convicted him and sentenced him to thirty years imprisonment and twelve strokes of corporal punishment. In addition, he was ordered to compensate Violent Jackson (PW1) an amount of T.Shillings 200,000/= for the injuries and the humiliation suffered because of the sexual assault the appellant committed on her.

Aggrieved by the judgment, the appellant lodged an appeal in the High Court but he was not successful. The High Court was satisfied that the appellant was properly convicted. Still aggrieved, the appellant filed a second appeal in this Court. Although he has filed four grounds of appeal, his substantive ground of appeal is one. His main complaint is that he was convicted on an uncorroborated evidence of the prosecution witnesses.

Being mindful that this is a second appeal, the Court is not supposed to interfere with concurrent findings of fact by the courts below unless in convicting the appellant the lower courts misdirected themselves in the assessment of the evidence, hence occasioning miscarriage of justice on the part of the appellant. See the cases of **Daniel Nguru V R** Criminal

Appeal No. 178 of 2004(unreported) and **Salum Mhando V R** [1993] T.L.R.170.

Guided by this principle, the issue before us is whether there was any misdirection on the part of the lower courts necessitating interference by the Court. In the first ground of appeal the appellant complains that the evidence upon which his conviction was based is weak. The second ground is a complaint about admission of evidence of PF3 but this one was dealt with by the High Court on first appeal and that evidence was expunged from the record. This ground was therefore raised by the appellant out of ignorance. The third ground is a repetition of the second one. It is also concerned with evidence of PF3 which we have also expressed our considered opinion on the same. The fourth ground also touches on the weakness of the prosecution evidence so it is related to the first ground.

As stated, the appellant was charged with the offence of rape contrary to section 130(1)(2) (e) of the Penal Code. As per section 130(4) of CAP 16 the offence of rape is proved when:

(a) Penetration however slight is sufficient to constitute the sexual intercourse necessary to the offence ; and

(b) Evidence of resistance such as physical injuries to the body is not necessary to prove that sexual intercourse took place without consent.

When Violent Jackson, (PW1) the victim of the offence testified in the trial court on 12th October, 2000 explaining what the appellant did to her on the date of the commission of the offence, she said:

> *"The accused hit my legs with his legs and I fell down. He cut the buttons of my skirt and undressed my skirt. He also undressed my underpants by pulling it down to my legs. The accused unfastened his trouser and pulled down his trouser and underpants down to his knees and lied on top of me. I was lying down face upwards. The accused then took his penis and inserted it into my vagina. The accused emitted twice. I was shouting at the time the accused was having intercourse with me..."*

In cross examination by the appellant to dispute what the complainant told the trial court, the appellant did not shake her evidence.

PW1 was consistent that she did not tell lies. The explanation by complainant on what the appellant did to her, falls squarely within what constitutes rape under section 130 (4) (a) of CAP 20. In the case of **Salum Mkumba V R Criminal** Appeal No. 94 of 1999 (unreported) the Court held that the best witness in rape cases is the victim, a woman where consent is required and a girl where consent is immaterial. PW1 was therefore the best witness to prove the commission of the offence of rape by the appellant and indeed she proved that the appellant committed the offence. In this case the complainant, the victim of the offence was 17 years. Under section 130(1) (e) of CAP 16 it was immaterial whether or not PW1 consented to the sexual intercourse. But in this case, apart from the evidence of PW1, there was also the evidence of PW2 who heard the complainant shouting for help. When he responded to the call and went to the scene of crime, he found the appellant in "*fraglante delicto*" raping the complainant. The evidence to prove the offence of rape was therefore more than sufficient.

In such a situation there is no room for the Court to find that the evaluation of the evidence as made by the Courts below resulted in a miscarriage of justice on the part of the appellant. For this reason, we

have no reason for interfering with the concurrent finding of facts by the courts below. The appeal is devoid of merit. We dismiss it in its entirety.

DATED at **DODOMA** this 12th day of September, 2013.

E. A. KILEO
JIUSTICE OF APPEAL

N. P. KIMARO
JUSTICE OF APPEAL

S. A. MASSATI
JUSTICE OF APPEAL

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

M. A. MALEWO
DEPUTY REGISTRAR
COURT OF APPEAL