

IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

(CORAM: MBAROUK, J.A., ORIYO, J.A., And JUMA, J.A.)

CRIMINAL APPEAL CASE NO. 18 OF 2012

FELIX S/O PATRICEAPPELLANT

VERSUS

THE REPUBLICRESPONDENT

**(Appeal from the decision of the High Court of Tanzania
at Dar es Salaam)**

(MSUYA, J.)

Dated the 17th day of August, 2011

in

Criminal Appeal No. 19 of 2011

JUDGMENT OF THE COURT

9th July & 19th August, 2015

ORIYO, J.A.:

The appellant was convicted as charged in the District Court of Bagamoyo of rape, contrary to section 130 of the Penal Code as amended by sections 5 and 6 of the Sexual Offence Special Provisions Act No. 4 of 1998. The particulars of the charge read as follows:-

*" That Felix Patrice charged on the month of July 5
at night time at MapatanoKwangandu Village within
Bagamoyo District in Coast Region wilfully and*

unlawfully did (sic) carnal knowledge to (sic) one TatuSalum a girl under 18 years old and caused to conceive"

When the charge was read out to him on 7/3/2006, he vehemently denied. Following a full trial, he was convicted as charged and sentenced to the statutory minimum sentence of thirty (30) years. Aggrieved, he appealed to the High Court where the conviction and sentence were upheld. Still dissatisfied he has lodged this appeal.

At the hearing, the appellant appeared in person, unfended. MsNeemaHaule, learned Senior State Attorney represented the respondent Republic. Arguing in support of the appeal, Ms. Haule urged us to allow the appeal on the basis of the defects in the Charge Sheet, specifically the Statement of Offence (*supra*), which cited only section 130 of the Penal Code without citing the particular categories of section 130 thereof. The learnedSeniorState Attorney submitted that as the appellant was convicted of statutory rape under section 130 (2) (e) of the Penal Code, which was not shown in the statement of offence, the defect is incurable under section 388(1) of the Criminal Procedure Act. She referred us to **MarekanoRamadhaniVs Republic**, Criminal

Appeal No. 202 of 2013, (unreported); in support thereof. Section 135 of the Criminal Procedure Act partly reads of follows:-

" 135 The following provisions of this section shall apply to all charges and informations and, notwithstanding any rule of law or practice, a charge or an information shall, subject to the provisions of this Act, not be open to objection in respect of its form or contents if it is framed in accordance with the provisions of this section:-

(a) (i) A count of a charge or information shall

commence with a statement of the offence charged, called the statement of the offence;

(ii) the statement of offence shall describe the offence shortly in ordinary language avoiding as far as possible the use of technical terms and without necessarily stating all the essential elements of the

offence and, if the offence charged is one created by enactment, shall contain a reference to the section of the enactment creating the offence;”

It is now settled law that in terms of section 135 of the Criminal Procedure Act, it is mandatory that a charge should not only describe the offence but make reference to the specific section and subsections of the law creating such offence; see **Charles s/o MakapiVs Republic**, Criminal Appeal No. 85 of 2012 and **MarekanoRamadhaniVs Republic** (supra), (both unreported).

In **MarekanoRamadhani**, the Court cited its earlier decision in **SimbaNyanguraVs Republic**, Criminal Appeal No. 144 of 2008 (unreported), in which the appellant had been charged of rape contrary to **sections 130(1) and 131 of the Penal Code**. The Court observed that:-

“...in a charge of rape an accused person must know under which of the descriptions (a) to (e) the offence he faces falls so that he can be prepared for his defence.”

The consequences of a charge which does not specify which of the categories (a) to (e) in section 130(1) of the Penal Code the accused faces, were stated thus:-

"...this, lack of particulars unduly prejudiced the appellant in his defence..."

Similarly, in **MussaMwaikundaVs Republic**, [2006] TLR 387, the Court observed:-

" The principle has always been that an accused person must know the nature of the case facing him. This can be achieved if a charge disclosed the essential elements of an offence... In the absence of disclosure, it occurs to us that the nature of the case facing the appellant was not adequately disclosed to him."

The Court found the said charge defective in the circumstances. We fully subscribe to the holdings in the above cited decisions of the Court in this respect.

Unfortunately, this aspect of the defects in the charge sheet were not brought to the attention of the learned judge on first appeal, in the case under consideration. Had the defects been brought to her

attention, in our view, she would not have upheld the conviction and sentence as she did.

As the two courts below did not address the defects in the charge sheet, we are constrained to allow the appeal, quash the conviction, set aside the sentence and order for the immediate release of the appellant from custody.

DATED at DAR ES SALAAM this 5th day of August, 2015.

M. S. MBAROUK
JUSTICE OF APPEAL

K. K. ORIYO
JUSTICE OF APPEAL

I. H. JUMA
JUSTICE OF APPEAL

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


E.Y. MKWIZU
DEPUTY REGISTRAR
COURT OF APPEAL