

IN THE COURT OF APPEAL OF TANZANIA

AT TANGA

(CORAM: MUSSA, J.A., LILA, J.A., And MKUYE, J.A.)

CRIMINAL APPEAL NO. 86 OF 2017

MSUYA MJANJA.....APPELLANT

VERSUS

THE REPUBLIC.....RESPONDENT

(Appeal from the decision of the High Court of Tanzania at Tanga)

(Aboub, J.)

dated 10th day of March, 2017

in

Criminal Appeal No. 84 of 2016

JUDGMENT OF THE COURT

19th & 27th February, 2019

MUSSA, J.A.

In the District Court of Handeni, the appellant was tried and convicted on the following charged sheet:-

"STATEMENT OF OFFENCE: RAPE C/S 130(2)(B) OF THE PENAL CODE, CHAPTER 16 VOL. 1 OF THE LAWS(R. E. 2002).

PARTICULARS OF OFFENCE: MSUYA MJANJA on unknown day of August 2015 at Gumbonneka village within Handeni District in Tanga Region

did have carnal knowledge to one REHEMA MUSA."

The appellant denied the charge, whereupon the prosecution featured three witnesses in support of its claim. In a nutshell, the case for the prosecution, as narrated by Rehema Mussa (PW3), was to the effect that, on the fateful day, the appellant confronted her whilst she was grazing, fell her down and ravished her. It is noteworthy that PW3 testified by signs, through her mother, Zaina Said (PW2), on account that she is a dumb person. The latter also gave evidence but hers was, in effect, a mere recital of the sign narrative which was allegedly told by her daughter, PW3. In addition, there was testimony from a four-year-old brother of the victim, namely, Bakari Hassani (PW1) who claimed to have witnessed the despicable incident. For his part, the appellant simply denied the accusation with a statement that he did not rape the girl.

On the whole of the evidence, the learned trial Resident Magistrate was satisfied that the prosecution proved its case to the hilt and, accordingly, the appellant was convicted as charged and handed down the mandatory sentence of thirty (30) years imprisonment. He was

dissatisfied but his appeal was dismissed in its entirety by the High Court (Aboud, J.) for being bereft of merits, hence this second appeal.

At the hearing before us, the appellant was fending for himself, unrepresented, whereas the respondent Republic had the services of Mr. Waziri Magumbo, learned State Attorney. When we asked him to address us on the merits of the appeal, the appellant deferred his explanation to a later stage after the submissions of the learned State Attorney. For his part, Mr. Magumbo supported the appeal, more particularly, on account that the charge to which the appellant stood arraigned during the trial was incurably defective. Elaborating the shortcomings, Mr. Magumbo submitted that, in the charge sheet at hand, the statement of offence deficiently predicates the offence of rape under section "130(2) B" of the Penal Code, which is, after all, non-existent. That statement, he said, should have appropriately made reference to one of the categories of rape enumerated under paragraph (a) to (e) of section 130(2) of the Penal Code. Furthermore, the learned State Attorney submitted that, the statement of offence did not cite the punishment provision which, in this regard, is section 131(1) of the Penal Code. In sum, Mr. Magumbo contended that the shortcomings on the charge sheet have the effect of vitiating the entire trial proceedings

and he, thus, urged us to invoke section 4(2) of the Appellate Jurisdiction Act, Chapter 141 of the Revised Edition of 2002(AJA) so as to quash all the proceedings of the trial as well as the first appellate court.

Having heard the learned State Attorney, the appellant fully supported him without more. We similarly fully subscribe to the lucid submissions of the learned State Attorney. We may only add that for a charged sheet to be valid, it must comply with the provisions of section 135 of the Criminal Procedure Act, Chapter 20 of the Revised Laws 2002 (CPA). Briefly, the referred provisions enact that every charge must contain a statement of offence and particulars of offence and, what is particularly relevant to this matter is paragraph (a)(ii) of section 135, which requires that:

*"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.**" [Emphasis added].*

We have supplied emphasis to the above text to stress that every statement of offence in a charge sheet must contain a reference to the section of the law creating the offence charged.

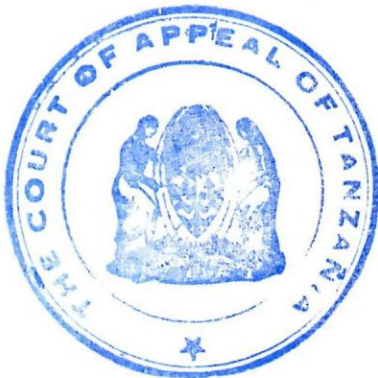
In the final event, we are minded to invoke our revisional jurisdiction and, accordingly, we quash the entire proceedings of the two courts below. The appellant should be released from prison custody forthwith unless he is held for some other lawful cause.

DATED at **TANGA** this 26th day of February, 2019.

K. M. MUSSA
JUSTICE OF APPEAL

S. A. LILA
JUSTICE OF APPEAL

R. K. MKUYE
JUSTICE OF APPEAL



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


E. Y. Mkwizu
SENIOR DEPUTY REGISTRAR
COURT OF APPEAL (T)