

**IN THE HIGH COURT OF TANZANIA
AT DAR ES SALAAM**

CRIMINAL APPEAL NO.100 OF 2004

**(From the Decision of the District Court of Ilala
in Cr. Case No. 1010 of 2002 Mrs Kabuta, SRM)**

MOSES MIRANSIAPPELLANT

VERSUS

THE REPUBLICRESPONDENT

J U D G M E N T

A.Shangwa,J.

The Appellant Mosses Miransi was charged in the District Court of Ilala with two offences . On the first Count, he was charged with rape C/S 130 of the Penal Code as amended by the sexual provisions Act No. 4 of 1998. On the second Count, he was charged with abduction of a girl aged sixteen years old C/S 134 of the Penal Code.

On that date, the Appellant did not appear. The case was adjourned for ruling on 13/8/2003. Ngasoma, DM ordered for a warrant of arrest to be issued.

On 13/8/2003, Mrs Kabuta, RM re-assigned the Appellant's case to herself on grounds that Ngasoma, DM was on safari. She adjourned it up to 8/9/2003. On that date, the Appellant was absent. Mrs Kabuta, RM proceeded to record the testimony of P.W.2 Mwamini Simba . After recording her testimony, she adjourned the case up to 1/10/2003. On that date, the case was adjourned by Asajile, DM up to 18/11/2003. From that date, Mrs Kabuta, RM adjourned it up to 19/1/2004. On that date, she adjourned it for judgment on 8/3/2004. Judgment was not delivered on 8/3/2004. Instead, it was delivered on 25/3/2004 in the absence of the Appellant. Mrs Kabuta, RM convicted him in his absence and sentenced him to 30 years in prison on the first Count , and 3 years in prison on the second Count.

On 24/6/2004, the Appellant appeared before Mrs Kabuta, RM who ordered that he should be sent to prison to serve his sentence which was imposed on him in his absence on 25/3/2004.

Before this Court, the Appellant submitted that he was convicted in his absence while he was at Nachingwea where he had gone to visit his mother who sustained burns when her house was set on fire by unknown persons.

The learned State Attorney **Mr. Mweyunge** did not support the Appellant's conviction which was imposed on him by Mrs Kabuta, RM due to the fact that he was not given opportunity to cross examine P.W.1 and to defend himself.

The trial Court's record do show that the ruling on the Appellant's objection which was raised against the admission

in evidence of certain exhibits already mentioned was never written and delivered to the parties. This means that when Mrs Kabuta, RM took over the proceedings from Ngasoma, DM, the examination in chief of P.W.1 was not yet over.

The trial Court's record further shows that when she took over the proceedings, Mrs Kabuta, RM ignored the mandatory provisions of S.214 (2) (a) of the Criminal Procedure Act, 1985 as she did not bother to wait until when the Appellant enters appearance for informing him of his right to demand that P.W.1 be re- summoned and re-heard. In addition to that, the record shows that the provisions of S. 226 (2) of the Criminal Procedure Act, 1985 were not complied with because when the Appellant appeared before Mrs Kabuta, RM on the date she sent him to prison, she did not bother to find out from him the causes which led to his absence and whether his defence has merit for the purposes of setting aside his conviction and affording him an

opportunity to defend himself .S. 266 (2) of the said Act provides as follows :

" S.226 (2) if the Court convicts the accused person in his absence, it may set aside such conviction, upon being satisfied that his absence was from causes over which he had no control and that he had a probable defence on the merit".

From the trial Court's record, it is quite clear that the Appellant was convicted without being given an opportunity to defend himself. This means that he was condemned unheard.

For this reason, I quash his conviction and set aside his sentence of thirty years in prison. I therefore allow his appeal. Under the circumstances of this case, I do not think that a retrial is necessary . So far, he has been in jail for about one year and six months. I order that he should be

released from there with effect from today unless otherwise
he is lawfully detained therein on another cause.


A. Shangwa, J.

13/12/2005

Delivered in open Court this 13th day of December, 2005


A. Shangwa

JUDGE

13/12/2005