

IN THE HIGH COURT OF TANZANIA
AT TABORA
(Tabora Registry)
CRIMINAL APPEAL NO. 112 OF 2008
ORIGINAL CRIMINAL CASE NO.299 OF 2007
OF THE DISTRICT COURT OF TABORA DISTRICT
AT TABORA

BEFORE ; - P.G. MALIGANA., Esq. RESIDENT MAGISTRATE
SAMSON S/O MWAIJIBE.....APPELLANT
(Original Accused)
Vs.
THE REPUBLIC.....RESPONDENT
(Original Prosecutor)

12/11/2008 & 16/2/2009

JUDGMENT

KADURI – I

SAMSON s/o MWAIJIBE was alleged to have had sexual intercourse with one GAILETH D/O BETRAM, a girl aged 15 years. The incident is alleged to have taken place on the 3rd day of October, 2007 at about 7.00 a.m at Ipole within the District of Sikonge in Tabora Region. The offence with which he is charged is based under section 130 and 131 of the Penal Code, Cap. 16 R.E. 2002.

The appellant has preferred this appeal and has 6 grounds. The learned State Attorney, Ahmed Seif decided to deal with the 4th ground first as he thought it could dispose of the appeal.

The fourth ground of the appellant's appeal is on the right to defence, which the appellant submits that he was denied.

The record of the trial court shows that on 21/2/2008 the prosecution closed its case. The appellant then notified the witness who is at Ipole Primary School. The case was adjourned to 28/2/2008 for defence. On the 28/2/2008 the appellant informed the court that he was not feeling well and was not ready to talk anything. The court asked the appellant for a medical report which the appellant did not have. The appellant's prayer for adjournment was refused and he was ordered to defend himself. The appellant remained mute. The court fixed a day for judgment.

From what transpired as narrated above, it is the learned State Attorneys submission that the appellant was denied his right to be heard in defence. Section 231 Criminal Procedure Act has been referred to in support of this submission.

In Criminal Appeal No.120/2005 the Court of Appeal held that: -

Section 231 of the Act contain a fundamental right of an accused person to be heard before they are judged. It directs that a trial magistrate must inform accuseds that they have a right to make a defence or choose not to make one in relation to the offence charged or to any other alternative offence on which the court could under the law convict. Not only is an accused entitled to give evidence

testify in their behalf. So the section is an elaboration of the important maxim “aud alteram partem” and that no one should be condemned unheard.”

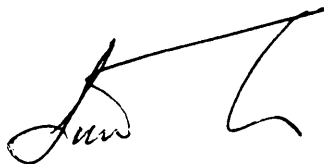
In the above case the orders of judgment of the District Court was nullified, and that of the High Court as well. The proceedings in the High Court based on the nullified judgment were also nullified.

The trial Magistrate erred in law in not granting the appellant his right to be heard. He proceeded to set a date for

judgment regardless of the appellant's indignation and request to be heard by another magistrate.

For the above reasons I hereby nullify the trial court's proceedings, and order that the case be heard by a another magistrate with competent jurisdiction.

It is so ordered.

A handwritten signature in black ink, appearing to be "J. L.", written over a horizontal line.

JUDGE

2/12/2008