

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE DISTRICT REGISTRY OF SHINYANGA  
AT SHINYANGA**

(APPELATE JURISDICTION)

**PC. CRIMINAL APPEAL NO. 6 OF 2016**

(Arising from Bariadi District Court in Criminal Appeal No. 34 of 2015 (M.P Mrio, SRM);  
Originating from Criminal Case No. 292 of 2015 at Somanda Primary Court)

**JOYCE NGULIMI.....APPELLANT**

**VERSUS**

**JERADI JAMES.....RESPONDENT**

Date of Last Order: 24.10.2018  
Date of Judgment: 21.12.2018

**JUDGMENT**

**V.L. MAKANI, J**

The appellant in this case is JOYCE NGULIMI. She is appealing against the decision of Bariadi District Court in Criminal Appeal No. 34 of 2015 (M.P. Mrio, SRM). The case originated from Somanda Primary Court in Criminal Case NO.292 of 2015.

At the Primary Court (the **trial court**) the appellant alleged that the respondent on 10/12/2014 at about 16:00hrs in Majaida area within Bariadi District in Simiyu region hit the appellant on the head with an iron rod (*nondo*). The appellant also alleged that the respondent kicked her and causing injuries to her body specifically her head and waist and he also stole her mobile phone Nokia valued at TZS 100,000/=. It was the appellant's case that he found the respondent

grazing cows in her farm. And when she asked him why he was doing this the respondent started beating her. She said the respondent beat her with an iron rod to the extent that she suffered head and waist injuries. She said she was taken to the police and was given a PF3 then she was taken to the hospital. The trial court found that the appellant had failed to prove the case beyond reasonable doubt as no PF3 or any evidence was given to prove that the appellant was hit on the head and that she was referred to Bugando Hospital and she was x-rayed and found to have injuries on the head and the back. So the respondent was acquitted.

The appellant was dissatisfied and filed an appeal at the District Court. The said appeal was dismissed and the decision of the trial court was upheld. Being dissatisfied with the decision of the District Court the appellant has appealed to this court with six grounds of appeal, which can be summarised as follows:

- 1. The trial and district court refused to admit her exhibits that is the x-rays from Bugando, Diagnostic Form and PF3.*
- 2. That the trial court did not give her opportunity to call the doctors who examined her to give evidence.*
- 3. That the trial court recorded contradictory evidence of SW1 and SW2.*
- 4. That both the trial and District Court erred for giving their judgment without reasons.*

At the hearing of the appeal the parties appeared in person.

The appellant adopted the grounds of appeal and said that the exhibits were not accepted in both the primary and district courts. He said in the District Court the accused did not appear it was his brother. She said she is now dependent because the respondent beat her up and she cannot carry anything that is more than 1 kilogramme. She prayed her appeal to be allowed and the respondent to be punished.

The respondent denied beating the appellant. He said there was no PF3 that was presented at the Primary and District Courts. He insisted that the appellant was not telling the truth because he did not commit any offence.

The appellant in rejoinder insisted that the appellant beat her until she was taken to the hospital and the PF3 was tendered in court as an exhibit. She said the respondent beat her up and ran away for the whole year and when he came back he beat another person that is when he was arrested. She reiterated her prayers for the appeal to be allowed.

I have listened to the parties herein. I have also had an opportunity of going through the records of the Primary and District Courts and also the judgments by these courts. The main issue for consideration is whether or not this appeal has merit.

The offence of grievous harm in simple terms means causing very serious physical injury to someone. To prove grievous harm one has to show that he/she was severely injured and the assumption is that medical certification is the best proof. In the present appeal the appellant alleges that the respondent seriously injured her and that she went to the hospital for medical examination. She also claims that the trial court and the District Court refused to admit the PF3 and x-rays from Bugando Referral Hospital. With due respect to the appellant, the record of the trial court is silent on this allegation. I have perused both the handwritten and typewritten proceedings but there is nowhere that reflects that the appellant tendered the PF3 or the x-rays and the court refused to admit them as exhibits. In the absence of such exhibits it is apparent, as rightly found by the trial court, that the appellant did not have proof to substantiate that he was beaten and she received serious physical injuries. The trial court also observed that since the appellant alleged that she went for medical examination in a hospital then it would have sufficed if the doctor who treated her were called to testify as to the seriousness of the injury. In the absence of any medical certification there is doubt created as to whether the appellant was seriously injured and thus does not meet the test of proof beyond reasonable doubt in criminal cases, which is the duty of the prosecution and in this instance, the appellant. (see: the case of **Mohamed Saidi Matula vs. Republic [1995] TLR 3**).

Consequently, the appellant's complaint that her exhibits were refused by the trial court has no merit and is disregarded.

The appellant also claimed that the District Court refused and did not consider her exhibits. It is common knowledge that where a matter is not raised or a document is not tendered at the trial court, then it cannot have its way in the appellate court. It would have been improper for the District Magistrate to admit the PF3 and the x-rays while they were not tendered in evidence during trial (see the case of **Ismail Rashid vs. Mariam Msati, Civil Appeal No. 75 of 2015 (CAT-Dar es Salaam)**(unreported). This ground also has no merit and it is hereby dismissed.

The ground that the appellant was not given an opportunity to call a doctor is also baseless. The onus of proving a case lies with the one alleging a fact. The trial court could not have refused the appellant's witness and there is no record to that effect. This ground has no merit and it is dismissed.

Another complaint by the appellant is that the trial court recorded contradictory evidence of SW1 and SW2. This complaint has no merit because the trial magistrate is supposed to record what the witnesses are testifying, so if there are any contradictions, then such contradiction is by the witnesses and not by the trial court. In any case, the basis of the decisions by the lower courts was not on the contradictory statements by these witnesses but on the fact that there was no evidence to prove that the appellant sustained serious

physical injuries and further there was no direct evidence that the respondent was seen committing the offence of grievous harm against the appellant.

The last ground is also devoid of merit. The judgments of the lower court were proper and satisfied the provisions of section 312 of the Criminal Procedure Act CAP 20 RE 2002 as the said judgments contain points for determination and the reasons thereof. They are in writing and signed and dated by the respective magistrates.

In the result, I do not find any fault in the decision of the District Court and it is accordingly upheld. The appeal is hereby dismissed.

It is so ordered.



*V.L. Makani*  
**V.L. MAKANI**  
**JUDGE**  
**21/12/2018**