

IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)
AT DAR ES SALAAM
MISC. CRIMINAL REVISION NO. 10 OF 2017
AND
CRIMINAL APPEAL NO. 297 OF 2017
(Originating from Temeke District Court, Criminal Case No.
289/2007)
HAMISI MAGANGA APPLICANT
VERSUS
REPUBLIC RESPONDENT

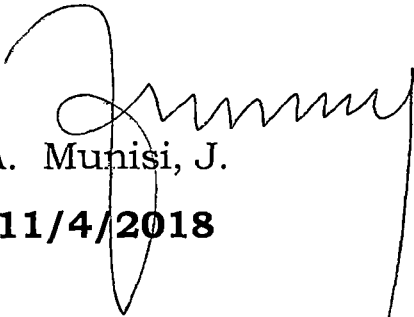
JUDGMENT:

The appellant was arraigned before the District of Temeke for the offence of rape contrary to Section 130 of the Penal Code. It was alleged at that on Kongowe area the appellant raped one Subira Abdallah without her consent. On 11/4/2018 when this appeal came up for hearing appellant appeared in person and gallantly prosecuted his appeal. Miss Mtafya learned State Attorney who appeared for the Republic supported the appeal on the main ground that the charge sheet was defective as it did not state which of the subsection of Section 130 of the Penal Code which appellant offended. Relying of the case of Musa Mwaikunda V. R. (2006) TLR 393, she argued that the omission rendered the charge sheet defective and therefore incurable. She thus prayed for the appeal to be allowed.

I have scrutinized the charge sheet, closely, the statement of offence only make reference to Section 130 of the penal code without stating the category of rape committed by the appellant. The provisions of Section 130 cited by the statement of offence does not exist in our

Law books. The penal code has Sections 130 subsection (1) to subsection (5). In that regard Miss. Mtafya is right that appellant was tried and convicted under the law that does not exist. I thus subscribe to that reasoning and agree that appellant was not afforded a fair trial as he was tried for an offence not created by the law.

Consequently, I allow the appeal quash the decision of the trial court and set aside the sentence imposed on the appellant. Accordingly, appellant is to be released forthwith from prison unless otherwise lawfully held.



A. Munisi, J.

11/4/2018