

**IN THE HIGH COURT OF TANZANIA  
(DODOMA DISTRICT REGISTRY)**

**AT DODOMA**

**(APPELLATE JURISDICTION)**

**DC CRIMINAL APPEAL NO. 102 OF 2019**

(Original Criminal Case No. 15 of 2019 of the District  
Court of Iramba at Kiomboi)

**ONESMO BIDA .....APPELLANT**

**VERSUS**

**THE REPUBLIC .....RESPONDENT**

*12/2/2020 & 26/2/2020*

**JUDGMENT**

**MASAJU, J.**

The Appellant Onesmo Bida, was tried in the District Court of Iramba at Kiomboi for the offence of Rape contrary to sections 130 (1) (2) (e) and 131 (1) of the Penal Code [Cap 16]. He was convicted of the offence and sentenced to thirty (30) years imprisonment.

Aggrieved by the said conviction and sentence, the Appellant has appealed to the Court against the conviction and the sentence. His petition of Appeal bears three (3) grounds of appeal in which he essentially argues that the prosecution case

against him; was not proved beyond reasonable doubt in the Court. When the appeal was heard in the Court on the 12<sup>th</sup> day of February, 2020 the Appellant was in service of the learned counsel Fred Kalonga, while the Respondent Republic was advocated by the learned State Attorney. Ms. Rachel Tuli, who supported the appeal.

the learned counsel for the Appellant, prayed to drop the 2<sup>nd</sup> ground of appeal, and argued only on the 1<sup>st</sup> and 3<sup>rd</sup> grounds of appeal. On the 1<sup>st</sup> ground of appeal he argued that the trial Court erred in convicting the Appellant without proof beyond reasonable doubt that, prosecution's evidence was contradictory since the alleged victim of crime, Wantongela Nasania (PW1) alleged that her sister was around on the material date she was raped by the Appellant, while F. 3776 F/Cpl. Deodatus (PW5) claimed to have been told by PW1 that on the material day PW1's sister was not at the scene of crime as she was in Mwanza.

The Appellant's learned counsel further submitted that, the Headmistress, Ms. Emelisiana Luena (PW2) testified that PW1 mentioned four (4) men who had sexual intercourse with her. That, the said allegations were put in writing but the document was not produced in the trial Court.

That, Dr. Gerald John Buhanza (PW4) testified that he medically examined PW1 on the 21<sup>st</sup> January, 2019 and found that PW1 was three months pregnant, while the charge sheet and PW1 reveals that sexual intercourse with the Appellant was on the 20<sup>th</sup> day of March, 2018. So by 21<sup>st</sup> day of January of 2019 the PW1 could have delivered a child.

The learned counsel further submitted that, PW1 was treated as a child of tender age thus she did not swear on affirm before giving evidence, thus she gave unsworn evidence which is not credible. He then prayed the Court to allow the appeal, quash his conviction and set aside the sentence of thirty (30) years imprisonment.

On their part, the Respondent supported the appeal on the grounds that;

Firstly, since the victim (PW1) was alleged to be under eighteen years old, the age was to be proved by the prosecution in the trial Court, but it was not.

Secondly, that according to PW2, she had been told by PW1 that she had sexual relations with 4 different men and that, the said evidence does not explicitly point to the Appellant to be responsible for statutory rape. Thus, their supporting of the appeal in the Court.

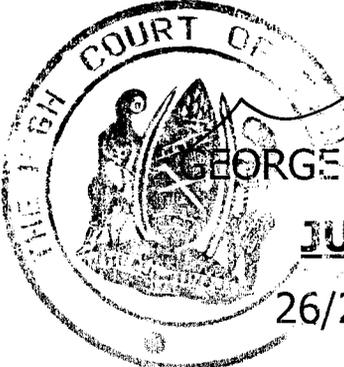
The Court agrees with both the Appellant and the Respondent on the grounds of appeal as raised by the Appellant and conceded by the respondent.

Prosecution evidence is contradictory since PW1 and PW5 version of stories are very different on whether or not PW1's sister was at the scene of crime on the alleged date the crime was committed. The said sister was neither called to testify on the allegations against the Appellant. This shakes credibility of PW1's evidence.

There was an irregularity in the trial Court's recording of PW1's evidence as well argued by the learned counsel for the Appellant since section 127 (4) of the Evidence Act, [Cap 6] was violated, by taking unsworn evidence from PW1, despite the fact that she was not a child of tender age. In addition, PW1's age was not proved in the trial Court. **In the case of Solomon Mazala V.R (CAT) Criminal Appeal No. 136 of 2012 (Dodoma Registry, Unreported)** it was decided that, in sexual offences relating to the under eighteen years old victims of crime (statutory rape) the age of the victims of such sexual offence must be specifically proved in the trial Court. In this case it was not done.

More damaging on the prosecution case was the Medical Examination Report (PF3) which indicated clear that PW1 had regular sexual intercourse as well as three (3) months pregnancy. The crime was alleged to have been committed on the 20<sup>th</sup> day of March, 2018 while the Medical Examination was conducted on the 21<sup>st</sup> day of January, 2019. The Medical Examination Report does not directly connect the Appellant to the crime. The Court asks itself if at all the offence of rape was committed by the Appellant on the alleged date how come when the Medical Examination was conducted ten (10) months later when PW1 was three (3) months pregnant. That means there are multiple men who had sexual intercourse with her as well testified by PW2 (Headmistress).

The Court is of the considered position that the appeal is meritorious, therefore, it is hereby allowed accordingly. The Appellant's conviction is quashed and the sentence of thirty (30) years imprisonment is set aside. The Appellant shall be released forthwith from prison unless he is otherwise held there for another lawful cause.

The seal of the High Court of Kenya is circular, featuring a central figure holding a scale of justice, surrounded by the text 'THE HIGH COURT OF KENYA'.  
GEORGE M. MASAJU  
**JUDGE**  
26/2/2020

The first part of the document discusses the importance of maintaining accurate records of all transactions. It emphasizes that every entry, no matter how small, should be recorded to ensure the integrity of the financial statements. This includes not only sales and purchases but also expenses and income.

In addition, the document highlights the need for regular reconciliation of bank accounts. By comparing the company's records with the bank statements, any discrepancies can be identified and corrected promptly. This process helps to prevent errors and ensures that the company's cash balance is always up-to-date.

Furthermore, the document stresses the importance of proper classification of expenses. Each expense should be categorized correctly to facilitate accurate reporting and analysis. This allows the company to track its spending patterns and identify areas where costs can be reduced.

Finally, the document concludes by reminding the reader that consistent and accurate record-keeping is essential for the long-term success of any business. It encourages the use of reliable accounting software and the appointment of a qualified accountant to oversee the financial records.