

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(Kigoma District Registry)

AT KIGOMA

APPELLATE JURISDICTION

(DC) CRIMINAL APPEAL NO. 46 OF 2019

*(Original Criminal Case No. 173 of 2018 of the District Court of Kigoma at Kigoma before Hon.
E.Y. Baha - RM)*

ADAM S/O FREDINAND.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

J U D G M E N T

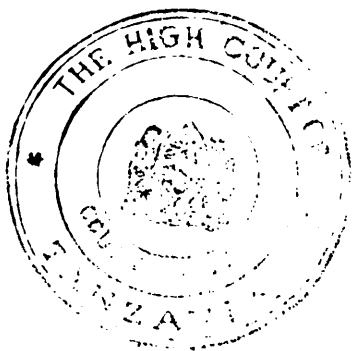
25/02/2020 & 26/02/2020

I.C. MUGETA, J.

Clement Masua, learned State Attorney has supported this appeal on two grounds which appears in the petition of appeal. These are firstly, that the evidence of the victim was taken in violation of section 127 (2) of the Evidence Act [Cap. 6 R.E. 2002] and Secondly, that evidence of the prosecution is full of contradictions on material issues. The appellant was charged with and convicted of attempted rape against the relevant provision of the Penal Code. He appeared unrepresented, therefore, he allowed the learned State Attorney to submit first. Mr. Masua referred the court to page 9 of the trial court's proceeding where the record of the

victim's testimony starts. The victim was aged 14 years at that time when she testified, therefore, she was a child of tender age in terms of section 127 (4) of the Evidence Act, hence, in terms of section 127 (2) of the Evidence Act, she could give evidence either on oath or affirmation or unsworn evidence upon making a promise to tell the truth. The victim made a sworn statement. However, the trial court did not record if it satisfied itself that the child understood the nature of oath. In **Issa Salum Nambaluka V. R**, Criminal Appeal No. 272/2018, Court of Appeal, Mtwara – (unreported), the Court of Appeal expunged the evidence of a child given on affirmation without a finding that she understood the nature of oath. I do the same with the evidence of the victim because no such finding was made before she gave her sworn evidence.

Without the evidence of the victim the prosecution's case crumbles. For that matter, I see no reason to even discuss the complaint on inconsistencies. The appeal is allowed. The conviction is quashed and the sentence is set aside. Appellant to be released from prison unless otherwise lawfully held for another cause.




I.C. Mugeta

Judge

26/2/2020

Court: Judgment delivered in chambers this the 26th February, 2020 before the appellant in person and Clement Masua State Attorney, for the Republic.

Sgd: I.C. Mugeta

Judge

26/2/2020