

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(Kigoma District Registry)**

AT KIGOMA

APPELLATE JURISDICTION

(DC) CRIMINAL APPEAL NO. 57 OF 2019

(Original Criminal Case No. 121 of 2018 of the District Court of Kibondo at Kibondo

before E. R. Marley - RM)

ALEX SINGA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

J U D G M E N T

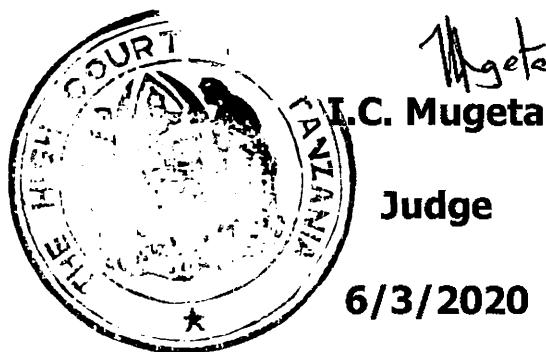
05/03/2020 & 06/03/2020

I.C. MUGETA, J.

The appellant was charged and convicted of raping his step daughter. Shaban Masanja learned State Attorney does not support the conviction because the offence was not proved. He agreed to the 3rd ground of appeal in that the evidence of the victim being of tender age was recorded in violation of section 127 (2) of the Evidence Act [Cap. 6 R.E. 2002]. The victim was aged three years and the trial court neither made a finding that she does not understand the nature of oath nor made her to promise to tell

the truth and not lies before she testified. He urged the court to expunge her evidence as I hereby do because the allegation is a matter of fact.

This leaves on record the evidence of the mother of the victim (PW3). She was not there when the incident took place. Her reason for associating the appellant with the offence is that she found appellant with the victim when she came back home. This is circumstantial evidence which does not give a single probability that the act was done by the appellant and the appellant alone. I find merits in the appeal. The offence was not proved and I accordingly quash the judgment and set aside the sentence. Appellant to be released from custody unless otherwise lawfully held for another cause.



Court: Judgment delivered in chambers before the appellant in person and Shabani Masanja, State Attorney for the Respondent.

Sgd: I.C. Mugeta

Judge

6/3/2020