

**IN THE UNITED REPUBLIC OF TANZANIA**  
**THE HIGH COURT OF TANZANIA**  
**(DAR ES SALAAM DISTRICT REGISTRY)**  
**AT DAR ES SALAAM**

**CRIMINAL APPEAL No. 122 OF 2020**

(Originating from District Court of Morogoro in Criminal Case No. 28 of 2018)

**ADAM SHANGO.....APPELLANT**

Versus

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

**JUDGMENT**

13<sup>th</sup> July, – 31<sup>st</sup> August, 2020

**J. A. DE - MELLO J;**

The Appellant **Adam Shango**, stood charged before the **District Court of Morogoro at Morogoro**, faced with one offence that of;

**Unnatural Offence contrary to section 154 (1) (a) and, (2) of the Penal Code Cap. 16 R.E 2002.** The facts in brief is that, on the **9<sup>th</sup> January, 2019** at **Mkundi Bwawani Area**, within **Municipality of Morogoro**, the accused person had carnal knowledge of one **Justine Elikana**, a baby boy of one year and, a half of age, against the order of nature. Three witnesses namely **PW1 D 5528 DCpl. Clemence** investigator and one who recorded the accused now Appellant caution

statement, **PW2 Meriana Mtandike**, the victims mother, **PW3 Mkumbo**, the doctor who examined the victim. However and, with a full trial, the Appellant was found guilty, convicted and, sentenced to life as per **section 154 (2) of Cap. 16 R.E 2002.**

Five grounds of Appeal have been raised following dissatisfaction, which for easy reference are here by reproduced;

- 1. That, the learned trial Resident Magistrate erred in law and fact by convicting the appellant while according to the court proceedings for the moment when preliminary hearing held at page 3, the corum was not highlighted at all contrary to the law**
- 2. That, the learned trial Resident Magistrate erred in law and fact by convicting the appellant while preliminary hearing conducted by the trial court was improperly contrary to section 192(3) of the Criminal Procedure Act, Cap 20 R.E 2002.**
- 3. That, the learned trial Resident Magistrate erred in law and fact by convicting the appellant while the substance of the charge were not read over to the accused person so as to enter**

**plea of not guilty when the prosecution case marked open at page 9 of the court proceedings contrary to section 228(1) of the Criminal Procedure Act, Cap 20 R.E 2002.**

**4. That, the learned trial Resident Magistrate erred in law and fact by convicting the appellant while he failed to address the accused person properly in terms of section 231(1) of the Criminal Procedure Act, Cap 20 R.E 2002. When the prosecution case marked closed (page 19-20 of the court proceedings)**

**5. That, the learned trial Resident Magistrate erred in law and fact by convicting the appellant while the charge against him was preferred under wrong provision of the law, in other words by the non-existing sections of the law.**

Oral submissions was entertained, the Appellant in person and, unrepresented, as **Monica Ndakidemi, State Counsel** fended the Republic.

Arguing his Appeal, the Appellant submitted making reference to page 3 of the proceedings, that the Trial Court erred by skipping a coram. With regard to the second ground, he is of a view ~~that~~ the Trial Court contravened

**section 192 of Cap. 20.** In absence of reading the charge over to the Appellant, for his understanding, the accused ended up pleading not guilty. This, he states contravened **section 228 (1) of Cap. 20.** On the 4<sup>th</sup> ground, the Trial Magistrate failed to address the accused in terms of **section 231 (1) of Cap. 20** vividly seen in **pages 19-20** of the proceedings. It is the Appellants belief that, all this lead the Magistrate to convict him on a wrong provision of the law under **section 154 (1) of Cap. 16.** Following the above the Court wanted to establish whether the Appellant is conversant with the offence he is charged with. Without mincing words he responded, "**kosa la kulawiti**".

Resisting the Appeal **Counsel Ndakidemi** submitted the Appeal to be baseless. She joined **ground 1** and **2** together, stating that, the coram alleged to be missing is a lie as record has it clear of its presence. Same is on Plea and, Preliminary hearing that was read over and understood which attracted a 'not guilty plea' from the accused. With regard to the fourth ground, nothing was violated towards **section 231(1) of Cap. 20,** as evidenced on **page 20** as the Appellant preferred to take his defence on oath without witness, rendering the allegation baseless. Further on the fifth ground, Counsel contends that, it is clear that **section 154 (1) (a) and, (2)**

**of Cap. 16** provides for un-natural offence and the victim was one year and, six months precisely. The ground, is similarly misconceived, Counsel pointed out. The Appeal is without merit as she prayed for its dismissal. Admitting the grounds to be legal and quite technical for him to address but, believe justice will prevail as he pleaded for acquittal. Commencing with the first ground of Appeal record indicates page 3 of the typed proceedings, that, on **14<sup>th</sup> of February, 2019**, the matter before **Hon A.Ringo**, Accused person was present whereas; **Kaanga** for the prosecution and, Court Clerk was one **Mganga**. This sufficed for what coram was and contrary to the Appellant's assertion. Regarding the second ground, section **192 (3)** of the **Criminal Procedure Act, Cap. 20 R.E 2019** provides;

**"At the conclusion of a preliminary hearing held under this section, the court shall prepare a memorandum of the matters agreed and the memorandum shall be read over and explained to the accused in a language that he understands, signed by the accused and his advocate (if any) and by the public prosecutor, and then filed."**

Again and from perusal on page 3, Memorandum of agreed facts, was duly conducted and signed. I find this ground to be baseless. Addressing the third ground, it is obvious that, the accused was arrested, interrogated,

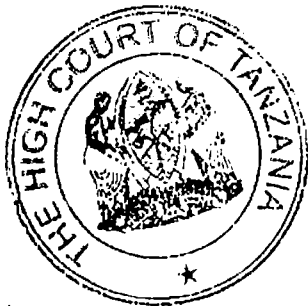
caution statement recorded and arraigned before the Court upon which the charge was read and explained to him. He pleaded not guilty. Not true that, section **228 (1)** of the of the **Criminal Procedure Act, Cap. 20 R.E 2019** was violated, whose contents are as follows;

**“The substance of the charge shall be stated to the accused person by the court, and he shall be asked whether he admits or denies the truth of the charge”.**

I also find this ground, not to have merit, as the Appellant understood the charge which was not only read but, even explained, affording him the chance to plead as he wished as he heard all the witnesses prior to accused person continue with the defence and, with two witnesses. Neither is it true that, the trial Resident Magistrate failed to address the accused person properly in terms of **section 231 (1)** of the **Criminal Procedure Act, Cap. 20 R.E 2002** nor skipping reading of the information and statement of offence. The reading from **page 20** it is vivid clear that, the he choose to make his defence under oath, call one witness, thus this **section 231(1)** of the **Criminal Procedure Act, Cap. 20 R.E 2019** was fully adhered to, as I find this ground, unmerited. Lastly, and, noting the provision referred to in the **first paragraph** of the judgment it is true **section 143 (1)** had been

captured but correctly referred as **section 154(1) (a) & (b) of Cap 16**. Similarly, is the charge sheet dated **31<sup>st</sup> January, 2019** indicating **"Unnatural Offence contrary to section 154(1) (a) and (2) of the Penal Code Cap. 16 RE 2002"**. The error I should admit is minor, a slip of a pen which does not go to the root of the matter, so long as it ended up with a right course, convicting and, sentencing the appellant according to law for, "unnatural offence". I am satisfied that, this Appeal is an afterthought, with no merits whatsoever, having been proved by the required standard set in Criminal matters. Proof without leaving any shadow of doubts. It is therefore dismissed in its entirety.

It is so ordered.



A handwritten signature in black ink, appearing to read "J. A. De-Mello".

**J. A. DE- MELLO**

**JUDGE**

**31<sup>st</sup> August, 2020.**