

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

**AT DODOMA**

**(APPELLATE JURISDICTION)**

**DC CRIMINAL APPEAL NO. 3 OF 2020**

(Original Criminal Case No. 257 of 2018 of the District  
Court of Singida at Singida)

**DAUDI KITANDU .....APPELLANT**

**VERSUS**

**THE REPUBLIC .....RESPONDENT**  
*2/4/2020 & 23/4/2020*

**JUDGMENT**

**MASAJU, J.**

The Appellant, Daudi Kitandu was tried in the District Court of Singida for Singida for the offence of Unnatural Offence Contrary to Section 154 (1) (a) of the Penal, [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 ten (10) grounds of appeal in which he essentially argues

that the prosecution case against him was not proved beyond reasonable doubt in the trial Court. When the appeal was heard in the Court the layman Appellant appeared in person and fully adopted high grounds of appeal to form his submissions in support of the appeal in the Court. He prayed the Court to allow the appeal and set him free.

The Respondent Republic was advocated by the learned State Attorney, Ms. Catherine Gwatu, who supported the appeal for the reasons; thus;

That, the evidence by the victim of crime, Jackson Aloyse (PW3), did not disclose when the offence was allegedly committed on him. That, the PW3, being fourteen (14) years old ought to disclose the alleged crime but he did not up until he was taken to the hospital complaining of backache. That, there was no any corroborating evidence for the Appellant's Cautioned Statement (Exhibit P1) which was not tested in the inquiry though the said exhibit made part of the evidence in the Court. That, the said Cautioned Statement has to be expunged from prosecution's evidence. That, once that is done, the remaining evidence by the victim of crime cannot prove prosecution case beyond reasonable doubt hence their supporting the appeal.

That is all that were submitted by the parties in the Court.

The Court appreciates the submissions made by the parties and their reasoning on this appeal.

The Court is inclined to agree with the parties that with such areas of improvement the prosecution case against the Appellant could not have been proved beyond reasonable doubt. The Appellant was arrested on the 14<sup>th</sup> day of August, 2018 at 10:00 hours, his Cautioned Statement was taken on the 15<sup>th</sup> day of August, 2018 at 16:57 hours, that is more than 24 hours later with no reasons thereof for the delay contrary to sections 50 (1) and 51 (1) of the Criminal Procedure Act, [Cap 20] which provide for the proper time for interviewing persons under restraints to be four (4) hours and a room for extension of time thereto.

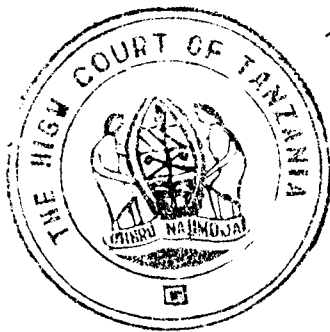
The said Cautioned Statement (Exhibit P1) was unlawfully admitted in the trial Court since the Appellant objected for the allegations that he was beaten and forced to sign. The trial Court did not conduct an inquiry thereto as required by the law but went on admitting the cautioned Statement as exhibit P1 as it is well seen at page 14 of the typed trial Court's proceedings. In that case, the Exhibit P1 is hereby expunged from the prosecution case.

The prosecution also failed to prove when exactly was the offence committed. The key witness, PW3 did not testify to that effect. Thus, there is doubt that if really the Appellant did commit the crime when was it *vis a vis* the alleged date on the charge sheet.

The trial Court did not consider the defence case in composing the judgment. In **Daniel Severin and 2 others V. R. (CAT) Criminal**

**Appeal No. 431 of 2018 (Bukoba Registry)** it was held that, non-consideration of defence case in the Judgment is fatal. There is, therefore, an irregularity in the trial Court's judgment.

That said, the prosecution case against the Appellant in the trial Court was not proved beyond reasonable doubt as so rightly submitted and advised by both parties to the appeal. The appeal is accordingly allowed. The conviction, sentence of 30 years imprisonment and orders are hereby quashed and set aside accordingly. The Appellant shall be released from prison unless he is held for another lawful cause.



GEORGE M. MASAJU

**JUDGE**

23/4/2010