

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF SHINYANGA**

AT SHINYANGA

CRIMINAL APPEAL NO. 84 OF 2019

(Arising from Criminal Case No.135 of 2018 of the District Court of Shinyanga at Shinyanga)

KIYUGU OMARY.....APPELLANT

VERSUS

THE REPUBLIC.....RESPONDENT

Date of Last Order: 06/05/2020

Date of Ruling: 29/05/2020

RULING

C. P. MKEHA, J

Before the District Court of Shinyanga, the appellant was arraigned for an offence of rape contrary to sections 130(1) & (2)(e) and 131(1) of the Penal Code. The particulars of the offence charged were such that, on 22/07/2018 at Matanda Area within Shinyanga Region, the appellant did have carnal knowledge with one I d/o T a child of 4 years of age. When the charge was read over to the appellant/accused, he protested his innocence.

At the end of trial, the accused/appellant was found guilty and sentenced to be imprisoned for the rest of his life. He was also ordered to compensate the

victim to the tune of TZS. 3,000,000/=. The appellant has appealed to this court challenging the trial court's decision.

Before approaching the appeal on merits, the court invited the parties to address it on whether there was a valid conviction before the trial court. Whereas the appellant was represented by Mr. Gilagiza learned advocate, the respondent was represented by Ms. Mbughuni learned Senior State Attorney.

The learned counsel for the parties were in agreement that there was no valid conviction as against the appellant. They however held different opinions on the way forward. Mr. Gilagiza learned advocate was of the view that because of failure of the trial court to properly convict the appellant, the appellant ought to be set at liberty. On the other hand, the learned Senior State Attorney submitted that, given the fact that the trial magistrate failed to adhere to section 312(2) of the Criminal Procedure Act it would be in the interests of justice to remit the matter before the trial court so that the mandatory provisions of the law can be adhered to. The case of **Mussa Athuman BUBELWA & 3 Others Vs The Republic, Criminal Appeal No.287of 2016** was cited.

At page 12 of the judgment appealed against, the trial magistrate stated:

".... I am satisfied that the prosecution side has managed to prove the case beyond reasonable doubt as it is required by law. I find the accused person guilty of the offence of rape..."


As indicated hereinabove, the trial magistrate merely made a finding of guilty. It has been held times without number that, a finding of guilty is not a conviction. The case cited by the learned Senior State Attorney is one of such authorities. Failure to convict is fatal. **See: Khamis Rashid Shaban Vs DPP, Criminal Appeal No.184 of 2012, CAT** (Unreported) and **Shabani Iddi Jololo and Others Vs Republic, Criminal Appeal No.200 of 2006, CAT** (Unreported).

As correctly submitted by the learned Senior State Attorney, the circumstances of the case demand that, the case file be remitted back for the trial magistrate to comply with the requirements of the law.

For the foregoing reasons, the trial court's judgment, sentence and orders are quashed. It is ordered that the record be remitted to the trial court with instruction that, a fresh judgment be expeditiously prepared and delivered in accord with the mandatory provisions of the law. The duration already

spent in prison to be taken into account in the event of conviction. The appellant shall remain in custody awaiting the said exercise.

Dated at **SHINYANGA** this **29th May, 2020**.


C. P. MKEHA
JUDGE
29/05/2020

Court: Ruling delivered in the presence of Mr. Gilagiza for the appellant and Ms. Mbughuni learned Senior State Attorney.

