

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

**(DODOMA DISTRICT REGISTRY)
AT DODOMA**

**APPELLATE JURISDICTION
DC. CRIMINAL APPEAL NO. 170 OF 2020**

(Originating Criminal Case No.132 of 2020 Singida)

HAMISI SULEMANI NTANDA..... APPELLANT

VERSUS

THE REPUBLIC.....RESPONDENT

JUDGMENT

01& 06/9/2021

KAGOMBA, J

This is an appeal by HAMIS SULEIMAN NTANDA (henceforth “the appellant”) who was convicted by the District Court of Singida at Singida (the trial Court) for the offence of incest by male’s C/s 158(1) (a) of the Penal Code [Cap 16. R.E 2019] and was sentenced to serve thirty (30) years in jail, a decision he vehemently challenge.

It was alleged before the trial Court that the appellant on diverse dates between 2019 and July 2020 at Kimpungua area, Misuna ward Mungumaji division within Singida District in Singida Region did have sexual intercourse with his biological daughter one AISHA D/O HAMISI, a standard five pupil at Ipembe Primary school of eleven years of age. After a trial involving six prosecution witnesses, the trial Court convicted him and sentenced him as stated.

Four witnesses were scheduled but six witnesses were called by the prosecution namely PW1 – WITNESS D/O WILLIAM URASSA a teacher at Ipembe Primary school who met with the parents of Aisha when they went to inquire about their daughter's routine of coming home late at night.

PW2 the victim AISHA HAMIS who testified that she used to live with her father and that the father used to come at night and have sex with her while her young brother was asleep. That on 28/7/2020 while going home unknown young man abducted her at 21:00 and he was taken to her home late. That on 29/7/2020 her parent took her to school for inquiry why she came late. It was after this event she divulged her purported long term severe done at Lumumba and Kimpunguna areas.

PW3- A/ Inspector Anastazia- was called to school. She gave victim PF which showed she had an unusual enlargement of her private part.

PW4- Selina Kilian – a clinical officer testified on virginity of the victim

PW5- Karoli S/O Justine Urassa.

PW6- H 3951 DC Exaud he investigated the case.

Defence was marshalled by DW1 – the accused who said the matter is fabricated. It came after he went to inquire about her daughter's behavior of coming late. He questioned the long silence of PW2.

DW2 – Anastazia D/O Boniface a house wife. Said it is not true. The husband has never been waking up at night neither at Lumuna and at Kipungua. The house was a self-contained one. So the accused could not be moving outside the bedroom.

DW3 Omary S/O Lissu Itambu:

Testified that on 29/7/2020 at 21:00hrs somebody knocked the door and when he came out found a bodaboda rider with the girl, the victim.

DW5- Amina D/O Mohamed:

2nd wife she had never seen that being done by the accused.

Issues:

Whether precaution has proved the case beyond reasonable doubts.

Court:

There is no doubt;

- The victim lost her hymen.
- The accused is the father
- Medical examination was properly done

The accused is the only suspect mentioned.

What about the abduction drama?

The prosecution has proved the case beyond reasonable doubt.

Second issue:

Whether the accused has done the act?

"This court considers defense witness but in summary there is no water tight? Evidence to deny. That is to say the accused is the one who is responsible.

Finality find the accused guilty.

1. The timing of her allegation Vs the behaviour of coming late home ought to have been considered by the trial Court. Evidence of PW2 was indeed suspicious.
2. The length of the silence of the accused in view of there being no allegation of threats or rewards if the victim divulged the information ought to have been considered.
3. PW3 young brother/Sister? Was important witness but never called to adduce evidence.
4. PF3 tendered by PW3, A/inspect Anastazia. This is wrong as she was not a medical doctor and knew nothing about human anatomy.
5. PF only showed enlargement of the victim's private parts. No semen's, no proof of penetration by the accused ground 6,7,8,9 all have merits. The appellant prayed this Court to quash the conviction and set aside the sentence. I agree the conviction is quashed and sentence is set aside. The accused is thus set free unless otherwise lawfully held.

Sgd: A. S. KAGOMBA

JUDGE


6/09/2021

Court:

Right of appeal to the Court of appeal explained despite the Respondent supporting the appeal.

Dated at **Dodoma** this **06th** of **September, 2021**




ABDI S. KAGOMBA
JUDGE