

**IN THE HIGH COURT OF TANZANIA**

**IN THE DISTRICT REGISTRY**

**AT MWANZA**

**HIGH COURT CRIMINAL APPEAL NO. 5 OF 2021**

(Original Criminal Case No. 56 of 2020 of the District Court of Chato District at Chato)

**EMMANUEL YAKOBO .....APPELLANT**

**VERSUS**

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

**JUDGMENT**

**22/02 & 13/04/2021**

**RUMANYIKA, J.:**

The appeal is against conviction and the custodial sentence of thirty (30) years with respect to the offence of rape Criminal Section 130 (1) (2) (e) and 131 (1) of the penal code Cap 16 RE. 2019 (the 1<sup>st</sup> count) namely impregnating a school girl c/s 60A (3) of the Education Act Cap 353 RE. 2019 as amended by Act No 2 of 2016 (2<sup>nd</sup> account) Emmanuel Yakobo (the appellant) having been acquitted.

Whereas the appellant he appeared in person. Ms. L. Meli learned state attorney appeared for the respondent Republic.

The three **(3)** grounds of appeal revolve around only two **(2)** points essentially: -

**(i)** That the learned trial resident magistrate improperly evaluated the evidence **(ii)** that the prosecution case was not, against the appellant proved beyond reasonable doubts.

The appellant did not have anything to submit additional to the grounds of appeal he simply asked this court to acquit him.

Arguing the last two grounds of appeal together, Ms. L. Meli learned state attorney submitted that with the evidence of Pw1 the doctors report (Exhibit "P2") and with regard to the issue of the victim's age the evidence of the mother the prosecution case was beyond reasonable doubts is proved.

From the records, it is as evident as follows: -

Pw1 Mjanja d/o Sikujua (the name not real) she stated that was a form I pupil of Minkoto secondary school but for the reason of months' pregnancy dropped out (appellant the responsible father) as they fell in love Mid. June, 2018 – September, 2019 therefore he consummated her at his home and upon completion of secondary education they promised each other to marry. That she didn't know was pregnant until when she missed

the period in July, 2019 and having been detected by the school authorities and really tested pregnant at Bwanga health center she named the appellant then the latter was arrested and accordingly charged.

Pw2 Mariam Elias Subi stated that she was the victim's biological mother one having been born on 14/6/2002 and having been detected pregnant by the school authorities and directed as such, the mother took the girl to Bwanga health center where really the later tested pregnant and the appellant having been named by the victim the responsible father he was arrested and charged as such.

Pw3 Metusela Simon he stated that he was Minkoto secondary school teacher that having been detected and he tested pregnant, on that ground the victim (Registration No. 3325 of 2019) of Bwanga secondary school she was suspended. The Admission Book and Attendance Register (Exhibits "P1" and "P2") respectively.

Pw4 Philimon Njohomi Mtunya he stated that as a medical doctor of Bwanga health center as he was in ordinary course of business at work on 12/11/2019 at about 7:00 hours he examined the victim and accordingly the latter tested say 22 weeks pregnant (copy of the PF3 – Exhibit "P2". That is all.



Dw1 (the appellant) in his testimony he denied the charges and further stated that if anything, he was only fixed much as also, with regard to the age of the victim the prosecution witnesses contradicted each other 17 or 19 years old?

Dw2 Malegesi Kupuula a resident and peasant of Busaka he also stated that the appellant and his son resided in one room and the former always came back home not late therefore the charges were but fabricated. That is all.

The central issue is whether as against the appellant the prosecution case was proved beyond reasonable doubts. The answer is no.

The victim (pw1) may have been offended and impregnated only 17 years old, at the time a school girl and she only named the appellant the responsible further, fine. But the fact would always remain that rightly or wrongly she did not name the appellant until twenty (22) weeks later but also only when she was detected, examined and she tested pregnant. Not only pw1's evidence was afterthought but also chances were there that somebody other than the appellant might have been the responsible further much as the later wasn't through DNA examination and analysis proven the responsible further also taking into consideration of the

common knowledge that not every consummated women conceived. In other words the victim was not credible and truthful enough for her evidence to solely ground the conviction the doctors report (Exhibit "P2") not withstanding because it had nothing scientifically to connect the appellant to the charges suffices the point to dispose of the entire appeal. The 2 grounds, and therefore the appeal it is allowed.

Right of appeal explained.

  
**S. M. RUMANYIKA**

**JUDGE**

**01/04/2021**

The judgment is delivered under my hand and seal of the court in chambers this 13<sup>th</sup> April, 2021 in the absence of the parties.



  
**S. M. RUMANYIKA**

**JUDGE**

**13/04/2021**