

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(SUMBAWANGA DISTRICT REGISTRY)**

AT SUMBAWANGA

DC. CRIMINAL APPEAL NO. 22 OF 2021

(C/O Criminal Case No. 61 of 2020 Mpanda District Court)

**WAMBA S/O LENARD @ ZAKARIA APPELLANT
VERSUS**

THE REPUBLIC RESPONDENT

30/08 & 20/09/2021

JUDGMENT

Nkwabi, J.:

The appellant was annoyed by the decision of Mpanda district court hence he tabled this appeal to this court. The petition of appeal comprises 4 justifications of appeal. The appellant was found guilty and convicted by the district court of Mpanda for rape contrary to section 130 (1) and (2)(e) and section 131 of the Penal Code Cap 16 R.E. 2002 for raping a girl allegedly aged 15 years. He was sentenced to 30 years imprisonment.

The offence was claimed to have happened between the 1st April 2020 to 21st October 2020 at Kampuni area within Mpanda District – Katavi region.

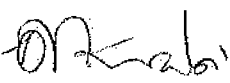
That the appellant had sexual intercourse with PW2 a girl aged 15. According

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to PW2, the accused person had twice attempted to seduce her in vain but on another day the appellant seduced her and she gave in hence they had sex and a sexual relationship proceeded until a mobile phone make Itel was seized from PW2 by her aunty in 2020 who told her parents and her father reported the matter. The appellant allegedly started seducing PW2 in April 2020. It could be in May 2020 when she had sex with the appellant. In October 2020 she too had sexual intercourse with the appellant. She was medically examined. The PF3 reveals she had sexual intercourse. There were minor bruises inside her labia majora. The appellant was arrested and prosecuted and hence convicted and sentenced. PW3 her further in his testimony said it was him who found the phone on searching the room of PW2 on 21/10/2020.

In his defence the appellant denied having committed the offence. He denied knowing PW2. The trial court was satisfied with the evidence on the prosecution side and convicted the appellant.

Annoyed by the decision of the district court of Mpanda in Criminal Case No. 61 of 2020, the appellant lodged a petition of appeal to this court. The

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petition of appeal has 4 grounds of appeal. I will jot down only the 4th ground of appeal which disposes this appeal:

That the trial court erred in law and in fact by convicting the appellant on a case which was not proved beyond reasonable doubt.

The hearing of this appeal was carried out by way of oral submissions. The appellant appeared in person while the Respondent was competently represented by Ms. Safi Kashindi, learned State Attorney. In his submission, the appellant prayed his grounds of appeal be adopted as his submissions.

On her part Ms. Kashindi supported the appeal. She admitted that they failed to prove the case beyond reasonable doubt. She said as this was a statutory rape, they ought to have proved the age of the victim, but they failed to do so since the affidavit (exhibit P2) which would prove the age of the victim was not read over after being admitted as exhibit hence it ought to be expunged. She cited **Robert Andondile Komba v DPP Criminal Appeal No. 465/2017** (CAT) (Unreported) at Mbeya and **Alex Ndendya v Republic Criminal Appeal No. 340/2017** (CAT) (Unreported) at Iringa. She prayed this court to uphold the appeal and set free the appellant.

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I agree with Ms. Kashindi, the anomaly in respect of the affidavit is seen on page 23. The same was admitted at Page 22 of the typed proceedings, but it was not read over and explained in court. I proceed to expunge exhibit P2 in the court record. Having expunged exhibit P2 in the court record, there is no any other evidence that proves the age of PW2 to be under 18 years. It is therefore, correct as Ms. Kashindi submitted that the prosecution failed to prove the charge beyond reasonable doubt.

I conclude by allowing the appeal. I quash the conviction and set aside the sentence. I order the appellant be set free from prison unless held there for other lawful cause(s).

It is so ordered.

DATED and signed at **MPANDA** this 20th day of September 2021.





J. F. Nkwabi
Judge

Court: Judgment delivered in chambers this 20th day of September, 2021 in the presence of the in person and Mr. Simon Peres learned State Attorney for the Respondent (the Republic) Both present via video conference.

J. F. Nkwabi
Judge

Court: Right of appeal is fully explained.




J. F. Nkwabi
Judge
20/09/2021