

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF MOSHI
AT MOSHI
CRIMINAL APPEAL NO. 26 OF 2021

ELIKUNDA FRANCIS HEDI APPELLANT
VERSUS

THE REPUBLIC RESPONDENT

JUDGEMENT

13/9/2021 & 18/9/2021

MWENEMPAZI, J

The accused was charged with unnatural offence contrary to Section 154(1) (b) of the Penal Code, Cap 16 RE 2002. It is alleged that the accused/appeallant on 31st August, 2019 at about morning hours at Msae area Mnazi Mmoja in Kisiwani village within the District of Same in Kilimanjaro Region had carnal knowledge of an animal, to wit, a female goat. The appellatant denied the charge. In the trial court PW1 Emmanuel Kakore testified that on the 31st August, 2019 at around 7:05 AM he took his five female goats for grazing to a nearby bush from his house. He was accompanied by his wife (PW2). They tied the goats and left. On the way back they met the accused (appellant) holding a hoe and a panga heading to the farm, they greeted each other as they are neighbours.

The witness PW1 testified that he was not at peace, he went back to the place he had tied his goats and found the accused (appellant) having sexual intercourse with one goat. PW1 apprehended the accused and took him to his neighbours where the accused apologized. He also confessed before them that it was the fifth time to have sexual intercourse with the goat PW2 and PW3 who are neighbours testified that they heard the appellant confess that he has been doing the act for the fifth time.

PW4 Fatuma Abdallah Sagala, is the veterinary officer working at Kisiwani. She has a diploma in Animal health from LITS Morogoro. She was called at the police post and found a goat tied on a tree, it is a she goat. She was required to examine as it is alleged to have been sexually interfered.

She testified as follows;

" I checked it and found its vagina was swollen had Murcus from vagina. Then I opinied that it was carnally known. Though I didn't know if it was a human or fellow goat that had sex with the goat. Professionally, mucus from the goat is produced only when it is on heat, or it has undergone sexual intercourse/coitus. But on that day the geat was not on heat".

As it may be observed it is only PW1 Emmanuel Kakore, who testified that he saw the appellant by his own naked eyes. The appellant denied in his defence to have been caught red handed or 'In flagrante delicto'. He was beaten up so that he may confess. His apology was for him not to be beaten up further.



The Republic is supporting, the appeal because the female goat was not brought. But I think, it was necessary to verify whether the mucus out of the goat's vagina were sperms from the appellant's ejaculation or mucus. In absence of verification, doubts remain that it may be there was penetration or not, or the appellant was seen or was forced to confess.

For the reasons, doubts must be resolved in favour of the appellant. The appeal is thus allowed, Judgement of the trial court quashed and sentence set aside. The appellant should be released forthwith unless otherwise held for another lawful reason. It is ordered accordingly.

Dated and delivered at Moshi this 13/9/2021.



T. MWENEMPAZI
JUDGE

