

**THE UNITED REPUBLIC OF TANZANIA**  
**JUDICIARY**  
**IN THE HIGH COURT OF TANZANIA**  
**MBEYA DISTRICT REGISTRY**  
**AT MBEYA**  
**CRIMINAL APPEAL NO. 49 OF 2021**  
*(Originating from the District Court of Rungwe at Tukuyu,*  
*Criminal Case No. 99 of 2020)*

**BONDI MWAIHOLA.....APPELLANT**

**VERSUS**

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

**JUDGMENT**

*Dated: 5<sup>th</sup> & 11<sup>th</sup> October, 2021*

**KARAYEMAHA, J**

In the District Court of Rungwe at Tukuyu, the appellant Bondi Mwaihola was arraigned for rape offence contrary to section 130 (1) (2) (e) and 131 (1) [Cap. 16 R.E 2019]. The prosecution alleged that on 16/10/2020 at about 10:00 hrs at Ilamba – Ntaba village within Rungwe District in Mbeya Region, the appellant did unlawfully have sexual intercourse to one ACD (in pseudonym) a girl of 15 years old.

After a full trial, the appellant was found guilty, hence convicted and finally sentenced to serve thirty (30) years imprisonment. Unhappy, the appellant has preferred this appeal.

When the appeal was called on for hearing on 05/10/2021, I noticed a pertinent procedural irregularity to the effect that the appellant did not understand *Kiswahili* language instead, he only understood *Kinyakyusa* as his mother tongue. When the court tried to interrogate him he could hardly respond to mention his name and answer some simple questions put on him in *Kiswahili*. On further interrogating his colleagues, this Court was informed that the interpretation was made by the public prosecutor for the accused person during the trial. On the other hand, the record shows that from the plea taking stage up to sentencing stage, no interpreter was provided to him and the proceedings were conducted in *Kiswahili* language all the way. I am of the considered opinion that such procedural irregularity is fatal even if the appellant could be represented.

In this appeal the appellant appeared in person and was unrepresented and offered nothing given the fact that he did not understand *Kiswahili*. The republic on the other hand was represented by Ms. Zena James, learned State Attorney.

Ms. James readily conceded to the raised issue and further submitted that the appellant neither understands *Kiswahili* nor *English* languages, he only understands *Kinyakyusa* and no interpreter was

provided to interpret Kiswahili into *Kinyakyusa* and vice versa. She added that, under these circumstances, the trial was unfair.

Thereafter, the Ms. James urged this court to nullify the proceedings and judgment of the trial court, then quash the conviction and set aside the sentence passed. She finally prayed for an order of retrial which is to be conducted in a language understood by the appellant.

On my part, it is trite law that whenever it appears that an accused person does not understand the language spoken during the proceedings of the case, he should be provided with an interpreter so as to enable him understands the proceedings of his case. In this case, conducting the trial in the manner it did, the trial Court posed contrary to the requirements of section 211 (1) of the Criminal Procedure Act, Cap. 20 R.E. 2019 (the CPA), hence there was no fair trial done to the appellant. The non compliance with section 211 (1) of the CPA renders the proceedings of the case null and void. Section 211 (1) of the CPA provides as follows:

*"211-(1) Whenever any evidence is given in a language not understood by the accused and he is present in person, it shall be interpreted to him in open court in a language understood by him."*

This legal position was emphasized by the Court of Appeal of Tanzania in ***Dastan Makwaya and Jovit @ Mtagaywa Jovin v Republic***, Criminal Appeal No. 179 of 2017 and ***Joachim Ikwechukwu Ike v Republic***, Criminal Appeal No. 272 of 2016 which quoted the case of ***Mpemba Mponeja v Republic***, Criminal Appeal No. 256 of 2009 (all unreported) thus:

*"We have also it prudent to emphasize the compliance with the requirement provided under section 211 (1) of the CPA even to those accused persons who are represented... taking into account the requirement stated in the provisions of section 211 (1) of the CPA together with the authorities from the decision of this court shown above, we are of the view that the effect of such an anomaly renders the proceedings and judgment of the High Court a nullity."*

In the event I am constrained to nullify the proceedings and judgment of the trial court, quash the conviction and set aside the sentence imposed on the appellant as in the absence of an interpreter, he might have been prejudiced. The way forward now is to order a retrial.

In view of the foregoing this Court settles to make the following orders:

1. The trial Court's proceedings and judgment are nullified.  
Conviction is quashed and sentence imposed on the appellant is set aside.
2. The case to undergo a retrial.
3. Considering that the appellant has been in custody since 05/03/2021, I order the retrial to be conducted expeditiously before another Magistrate.
4. Right of appeal to the Court of Appeal explained.



DATED at **MBEYA** this **11<sup>th</sup>** day of **October, 2021**

A handwritten signature in blue ink, appearing to read "J.M. Karayemaha", is written over a circular stamp.

**J. M. KARAYEMAHA**  
**JUDGE**