

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

(DC) CRIMINAL APPEAL NO. 1 OF 2020

(Original Criminal Case No. 212 of 2019 of the District Court of Singida at Singida)

JUMA RAJABU APPELLANT

VERSUS

THE REPUBLIC.....RESPONDENT

13/12/2021 & 22/12/2021

JUDGMENT

MASAJU, J

The Appellant, Juma Rajabu, was charged with, and convicted of RAPE contrary to sections 130 (1) (2) (e) and 131(1) of the Penal Code, [Cap 16 in the District Court of Singida at Singida. He was sentenced to serve thirty (30) years imprisonment. Hence the appeal in the court against both the conviction and sentence. His Petition of Appeal was made up of eight (8) grounds of Appeal in which he essentially alleges that the prosecution case against him before the trial Court was not proved beyond reasonable doubt.

When the Appeal was heard in the Court on the 13th day of December, 2021, the layman Appellant appeared in person. He adopted his grounds of appeal to form his submissions in support of the Appeal and prayed the Court to allow the Appeal.

Mr. Harry Mbogoro, the learned Senior State Attorney for the Respondent Republic did not contest the Appeal because the Halima Hassan (PW1), a child of tender age did not promise to tell the truth to the Court and not tell any lies prior to her testifying before the trial as section 127(2) of the Evidence Act, [Cap 6 RE 2019 guides. That, the evidence by Halima Hassan (PW1) has got to be expunged from the record of the trial Court, and once that is done, the prosecution case would be not able to sustain conviction. The Respondent Republic submitted that the trial court's procedural irregularity occasioned failure of Justice, hence there should be trial *de novo* under section 388(1) of the Criminal Procedure Act, [Cap 20 RE 2019].

Indeed, there was incurable procedural irregularity in the manner the victim of crime Halima Hassan (PW1) testified before the trial Court. The record of proceedings reveals that immediately after the said witness's particulars, the trial Court proceeded to record thus,

"The child understood the meaning of an oath and understood also the truth and its benefit. His evidence is recorded without an oath."

Thereafter the said witness was led in examination in chief by the learned State Attorneys for the prosecution. It is therefore true that the mandatory requirements of section 127(2) of the Evidence Act, [Cap 6 RE 2019] were not complied with.

That being the case, the evidence by Halima Hassan (PW1), the alleged victim of crime, is hereby expunged from the record of the trial Court for having been illegally adduced therein. The remaining prosecution evidence falls short of sustaining the conviction beyond reasonable doubt.

The trial against the Appellant before the trial Court was led by two learned State Attorneys, not by laymen. The said prosecutors being learned in law, they were in a better position to prosecute the case in accordance with the law, including guiding or drawing the attention of the trial court to section 127(2) of the Evidence, Act [Cap 6 RE 2019] in case the trial Court was passive of the said law. So both the prosecution and the trial court bear liability for failure of justice, if any, in this matter.

That being the case, the appeal is hereby allowed accordingly. The conviction and sentence of thirty (30) years imprisonment respectively, are hereby quashed ad set aside. The Appellant shall be released forthwith from prison unless there was a lawful cause to the country.

The Court has not been impressed by the Respondent's prayer that the trial be nullified and there be trial *de novo*. This is because the prosecution should not benefit from its own indiligence in the discharge of its prosecutorial duties



GEORGE M. MASAJU

JUDGE

22/12/2021