

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

AT DODOMA

DC. CRIMINAL APPEAL NO. 13 OF 2022

(Originating from District Court of Bahi at Bahi in Criminal case No. 36 of 2021)

SADIKI CHIKUMBIAPPELLANT

VERSUS

THE REPUBLIC RESPONDENT

15/6/2022&29/6/2022

JUDGMENT

MASAJU, J.

The Appellant was tried and convicted of the offence of Rape contrary to section 130 (1) (2) (e) read together with section 131(1) of the Penal Code [Cap: 16] in the District Court of Bahi at Bahi. He was sentenced to thirty (30) years imprisonment. Aggrieved with the trial Court's decision, the Appellant has come to the Court by way of an appeal.

The Appellant's Petition of Appeal is made up of nine (9) grounds of appeal in which the essentially argue that the prosecution case against

him was not proved beyond all reasonable doubt. He prayed the Court to allow the appeal.

When the appeal was heard in the Court on the 26th day of May, 2022 the layman Appellant appeared in person and prayed to adopt his Petition of Appeal to form his submissions in support of the appeal in the Court.

On her part, the Respondent Republic was represented by Miss Neema Taji, the learned State Attorney who contested the appeal by submitting that the Appellant was identified at the scene of crime whilst carnally knowing the victim of crime, Ester Musa Geuza (PW2) "*infragante delicto*". That he was identified by Elieza Samwel Geuza (PW1) the victim of crime (PW2) and Samwel Mkunaa (PW4) during daytime at 1400 hours and he was arrested there at the scene of crime.

That, the victim was a child of tender age. That the evidence was taken in compliance with section 127(2) of the Evidence Act[Cap 6]. That, although there was no documentary evidence as to the age of the victim (PW2) but there was evidence by PW1, the victim's grandfather

that the victim was born in 2014 and that she was a pupil at Lamaiti Primary School.

That, the evidence adduced by Isack Adina (PW3), the doctor on the admission in evidence of PF3(Prosecution Exhibit P1). That, the same was procedurally admitted in evidence.

That, since there were eye witnesses of the incident, PW1, PW2 and PW4 there was no need for the hamlet chairman to testify. That, there was no need for determination of whose sperms were found in PW2's vagina. That, the Appellant was found "*infragante delicto*" in the act of rape and arrested thereof at the scene of crime. That, the semen therefore belonged to him, the Appellant.

That, the sentence of 30 years imprisonment was illegal for the victim of crime was under 10 years old hence upon conviction of rape, the sentence thereof was life imprisonment pursuant to section 131(1) (3) of the Penal Code [Cap 6]. The Respondent prayed the Court to enhance the sentence accordingly plus corporal punishment thereof. The Respondent prayed the Court to dismiss the appeal in its entirety.

That is what was shared by the parties in support of, and against the appeal in the Court.

In the Trial court, the prosecution alleged that, on the fateful day at 1400 hours the victim of crime (PW2) went to the shop with her brother, Samwel Geuza, to buy juice cola. That, on the way back the Appellant took the victim (PW2) to the forest and raped her. That, Samwel Geuza ran home and informed PW1's grandfather (PW1) who went to the scene of crime and found the Appellant "*infragante delicto*" raping PW2. That, PW1 ran to inform two youths for assistance one of them being PW4. That, they apprehended the Appellant and took him to the Street Chairperson. That, PW1 and PW2's aunt examined the victim where they found the victim's vagina swollen and that there was blood and sperms. That, they informed the police and given PF3 for medical Examination. That, PW4 conducted Medical Examination on PW2.

The victim of crime was alleged to be 10 years of age during commission of crime hence underage. In his testimony PW1 alleged to have found the Appellant "*infragante delicto*" after being informed by Samwel Geuza who witnesses the Appellant forcefully taking PW2 to the forest, but, the prosecution did not call the said Samwel Geuza who would

be a key witness in proving the allegations against the Appellant. PW1 testified to have found sperms and blood in PW2's genitalia but the same cannot be traced in the Medical Examination Report (Exhibit P1) despite the examination being done on the same day of the incidence


PW3 who conducted medical examination on PW2 also testified to have found sperms in PW2's genitalia contrary to his Medical Examination Report (Exhibit P1) hence contradictions on the prosecutions case. The Medical examination Report itself leaves so much to be desired. The Report does not reveal any bruises, blood or sperms on the PW2's genitalia leaving so much doubt considering PW1 and PW3's evidence as well as the fact that PW2 was aged 10 years and the Appellant 19 years. There ought to have been blood, sperms and bruises according to PW1 and PW3'S evidence.

This leaves so much doubt on the prosecutions case. Also, PW4 who allegedly apprehended the Appellant testified to have arrived at the scene of crime and found the Appellant in the act. The offence was allegedly committed on the 15th day of May, 2021. PW4 testified in the trial Court on the 27th day of July, 2021, just two months past the alleged crime, but in cross examination and re-examination he stated not to remember the year the offence was committed. This shakes PW4's credibility.

That said, the contradictions and doubts shake the credibility of the prosecution case witnesses. Thus, the Court is of the considered position that the prosecution case against the Appellant was not proved beyond all reasonable doubt in the trial Court.

The Meritorious appeal is hereby allowed. The conviction and sentence against the Appellant is hereby quashed and set aside respectively.

The Appellant shall be released forthwith from prison unless there was another lawful cause to the contrary.

A circular seal of The High Court of Kenya is stamped in blue ink. The seal features a central emblem with a scale of justice and a book, surrounded by the text "THE HIGH COURT OF KENYA".
GEORGE M. MASAJU
JUDGE
29/6/2022