

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(SUMBAWANGA DISTRICT REGISTRY)

AT SUMBAWANGA

DC. CRIMINAL APPEAL NO. 90 OF 2021

(C/O Nkasi District Court in Criminal Case No. 155/2020)

PETER S/O MPANDUZI APPELLANT

VERSUS

THE REPUBLIC RESPONDENT

JUDGMENT

Date of last Order: 10/05/2022

Date of Judgment: 10/05/2022

NDUNGURU, J.

Before the trial court, the appellant was charged and convicted of rape offence Contrary to Section 130 (1) and (2) (e) and 131 (1) of the Penal Code Cap 16 RE 2019. The trial court found the appellant guilty and sentenced him to serve thirty (30) years imprisonment. Being dissatisfied, the appellant appealed to this court. The main ground of appeal was that the charge against him was not proved beyond reasonable doubt. He told the court that the alleged victim for rape was not called to testify before the court.

The Republic supported the appellant's appeal. The learned State Attorney told the court that the best evidence in rape cases comes from the victim. Thus in the absence of the victim the case loses leg to stand on. She referred the case of **Seleman Makumba V. Republic (2006) TLR 369.**

I agree with the appellant and the learned State Attorney that in such a circumstances the case against the appellant cannot be said to have been proved particularly taking into account that the said offence was committed at night. Further in her statement the victim said tom have not identified the rapist as the offence took place at dark night hours.

I allow the appeal, judgment of the trial court is hereby quashed. Conviction and sentence meted against the appellant are set aside.

The appellant be released from the prison forthwith unless held lawfully for any other cause.

It is so ordered.




D.B. Ndunguru

Judge

10/05/2022