

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(SUMBAWANGA DISTRICT REGISTRY)**

**AT SUMBAWANGA**

**DC CRIMINAL APPEAL NO. 8 OF 2022**

**EZEKIEL S/O JOSEPH @ HELMAN ..... APPELLANT**  
**VERSUS**

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

(Appeal from the decision of the District Court of Sumbawanga at Sumbawanga)

(G J. William, RM)

Dated 27<sup>th</sup> day of July 2022

In

Criminal Case No. 223 of 2020

**JUDGMENT**

09/05 & 06/06/2022

**NKWABI, J.:**

The appellant was convicted by the District Court with the offence of rape which is contrary to section 130 (1) and (2)(e) and section 131 (1) of the Penal Code Cap 16 R.E. 2019. Through the evidence of four prosecution witnesses and one exhibit, the trial court dismissed the defence of the appellant and convicted him as charged. He was sentenced to thirty years imprisonment. He was also ordered to compensate the victim at T.shs 2,000,000/=. He was not satisfied with the conviction and sentence.

He lodged with this court a petition of appeal which has six grounds of appeal in criticism of the decision of the trial court. The first one is that the appellant was convicted on a case that was not proved beyond reasonable doubt. For reasons that will be clear shortly, I find no need to reproduce all the grounds of appeal. I will deal with the 1<sup>st</sup> one. As a matter of fact, the respondent resisted the appeal. The respondent is, however, of the firm view that they proved the case beyond reasonable doubt, the conviction and sentence against the appellant ought to be upheld, the respondent opined. In this appeal, Ms. Maritha Maguta, learned State Attorney advocated for the respondent while the appellant appeared in person.

A brief history of the case is that in August 2020 PW2 accepted the inducement of the appellant and had sex with him. They escaped to Kasense where she was found. The appellant escaped. PW2, according to her evidence, was a student in form II at Kanda secondary school. There is grave contradiction in respect of the school the alleged victim was attending and also there is contradiction in the testimonies of material witnesses of the respondent. For instance, PW2 said and I quote:

*"... his father and brother followed us then the accused person run away."*

The victim's mother who is PW1 had these to say in evidence:

*"We have seen in to Kasense we found them Irene and Ezekiel and they run away. I came with my child ..."*

And in cross-examination PW1 worsened the contradiction when she replied:

*"We arrested you and we are with the village chairman."*

Could the caution statement allegedly made by the appellant save the ever-sinking boat of the respondent? I am afraid it would not. This is because though the appellant claimed in objection that he did not make the statement, and the prosecuting attorney claimed that the objection was baseless, the trial magistrate did not make any ruling to that effect thus, admitting the caution statement illegally which makes it subject to being expunged. It is also worthy to note that PW4 who tendered the caution statement of the appellant, is not known by name, illegally recorded the caution statement while he was the investigator of the case as he could have recorded what he had known from the case file. Further, it is unclear as to when the appellant was arrested thus making the caution statement highly unreliable.

As if to make things worse, PW6 Daniel the alleged teacher said the victim of the alleged sexual molestation was a student of form II at Kanondo Secondary School contrary to the name of the school. That contradiction calls for documentary evidence which is the students' attendance register or students' admission register. The victim said she was attending school which is Kanda secondary school just as per the 4<sup>th</sup> ground of appeal by the appellant. Admittedly, there is none. That affects the veracity of the evidence on the respondent.

It is my conviction that the respondent's case in the trial was tainted with grave contradictions which make it crumble to the ground. It is thus, I agree with the 1<sup>st</sup> ground of appeal that the charge sheet was not proved beyond reasonable doubt.

For those reasons, I allow the appeal, quash the conviction and set aside the sentence against the appellant. I order for the appellant's immediate release from prison unless he is held therein for another lawful cause.

It is so ordered.

**DATED** at **SUMBAWANGA** this 6<sup>th</sup> day of June 2022.



J. F. NKWABI

**JUDGE**