

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

**DC CRIMINAL APPEAL NO. 27 OF 2022**

(Arising from Criminal Case No. 33/2022 in the District Court of Kibondo before Hon.  
S.G. Mcharo - RM)

**IBRAHIM BUKURU ..... APPELLANT**

**VERSUS**

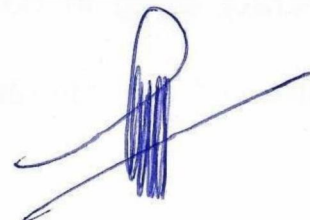
**THE REPUBLIC ..... RESPONDENT**

**JUDGEMENT**

*27/3/2023 & 6/6/2023*

**Mlacha, J.**

The appellant Ibrahim Bukuru (41) was sent to the district court of Kibondo in criminal case No. 12/2022 charged of two counts; Rape contrary to section 130(1) (3) (d) and 131(1) of the Penal Code Cap 16 R.E. 2022 and Impregnating a school girl c/s 60A (3) of the Education Act Cap 353 R.E. 2002 as amended by section 22 of the Written Laws (Miscellaneous Amendment) Act No. 4 of 2016. He was found guilty and convicted. He was sentenced to serve thirty (30) years imprisonment on the first count and twenty (20) years imprisonment on the second count. Sentences were ordered to run concurrently. Aggrieved by the conviction, he came to this



court with five grounds of appeal; **one**, that, before the court I denied the offence of rape as charged; **two**, that, the trial court erred in law and in facts in failing to consider the appellants defence; **three**, that, the trial magistrate erred in law and in fact by convicting and sentencing the appellant basing on weak evidence of PW1 which is full of hearsay; **four**, that, there was no any witness who dared to mention or testify to observe the appellant committing the alleged offence at the scene of crime other than the weak evidence of the victim herself and **five**, that, the trial magistrate erred in law and in fact in accepting that the prosecution side had proved its case beyond all reasonable doubts while in fact the whole prosecution evidence was weak.

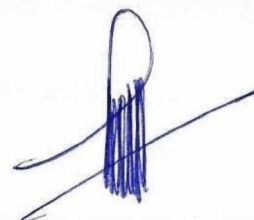
Noting defects in the grounds of appeal, Mr. Joseph Mathias who was engaged at a later stage to defend the appellant sought leave of the court and filed additional grounds. The additional grounds which were later changed to be the actual grounds of appeal reads; **one**, that, the trial magistrate erred in law and fact by failing to consider the defence raised by the appellant despite of him contesting his innocence; **two**, that, the trial magistrate erred in convicting the appellant by relying on circumstantial evidence without the same being properly collaborated; **three**, that, the trial



magistrate erred in law and fact by failing to consider that the prosecution side failed to prove their case beyond reasonable doubt; **four**, that, the trial magistrate's judgment is faulted in law by failing to accommodate the sentence of the accused upon conviction hence improper and **five**, that, the compensation ordered by the trial court at the amount of Tshs 1,500,000/= for the loss and injuries incurred by the victim are not substantiated (proved) hence unknown as to how the same has been arrived by the court.

The respondent Republic was represented by Raymond Kimbe state attorney. Hearing was done by written submissions.

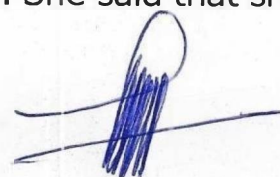
Before going to examine the submissions, this being a first appeal and thus amounting to a rehearing, a summary of the evidence is reproduced for easy of reference. PW1 J.S. (acronym of the victim to hide his identity) left school in February 2021 while in form IV. She was a student of Rusumo Secondary school in Ngara district, Kagera region. In June 2021, while in form III, she developed a symptom of falling down and becoming unconscious. She was sent by his father PW2 Salum Felician (45) to a local medicine man at Kibondo to receive treatments. The accused was the local medicine man. He said that she had evil spirits. This was revealed after payment of a fee of Tshs. 10,000/=. PW2 was informed of the decease and costs; Tshs



300,000/=, one goat and 2 chicken which he paid. The goat and chicken were calculated in money terms and he paid the accused. He was advised to leave his daughter for some days for management of the problem. He agreed and left. He received a call after 3 weeks telling him that his daughter was okay ready to go home. He came and picked her. She went to school but the problem reoccurred again. He sent her back to the accused in July 2021. The accused told him that the disease was big. He needed a further payment of Tshs 300,000/=. He asked for some lenience in the assessment. It was finally agreed that he should pay Tshs 250,000/= which he paid. He left his daughter with the accused for one month and two weeks receiving treatments. He was called to pick her after this period. He did so.

The accused told him that his homestead had problems. He needed to come and remove them. He communicated with him but he never came to remove the problems. He instead required him to send her daughter back to him. He then noted that he was dealing with a conman. He refused to send her back.

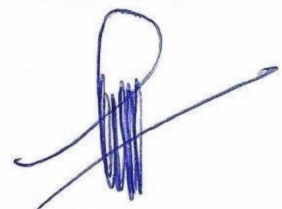
On 31/1/2022 PW2 received a call from the school requiring him to come at the school. He appeared and was told that her daughter was pregnant. His daughter told him that it was the witch doctor who did it. She told them that she never had any sexual intercourse with any other man. She said that she



was receiving treatment in the forest and raped. She could not disclose because she was warned by the accused not to disclose or risk the consequences. She was sent to the police station and later to hospital where she was confirmed to be pregnant.

Giving details of what happened, PW1 told the court that in August 2021 while still with the accused for treatment, the accused told his wife to take her to a place where they could meet him. They arrived there but he could not be found. His wife communicated with him over the phone and he said that he could come. He appeared later on a motorcycle. She and the accused boarded the motor cycle and moved to the next village. They dropped somewhere and drunk soda. They took the cyclist again back home. It was night time. The cyclist stopped on the way. The accused took her to a grave yard for some medication. He warned her not to tell anybody on what he could do to her. He then held his hands, made her sleep on the ground and inserted his penis in her vagina. He told her to be the treatment. He warned her not to tell anybody, including his wife. She did not tell anybody. This was repeated in another day. She was again warned not to speak.

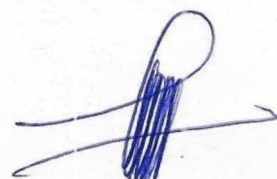
PW1 proceeded to tell the court that one day while his wife was away the accused had sex with her again. While the children were asleep, he took her



somewhere in the house and inserted his penis in her vagina. He warned her saying if she could tell anybody, one of them between her and her father could die. She stayed there for some days and returned home to resume studies. Her condition could not turn better. The accused demanded her to go back again on a third trip. His father refused. Soon later, she started to miss her periods. She could not disclose this due to threats. She was not aware that she was pregnant. She was called by Madam Lucy on 31/1/2022 for pregnancy test. She turned to be positive. The headmaster and Madame Lucy called her father and broke the news. She told them that it came from the traditional medicine man, the accused person. The matter went to the police and hospital.

PW3 Valence Mujuni (37) was a teacher at Rusumo Secondary School in the period. He told the court that the attendance of PW1 was not regular. She also had health problems failing unconscious many times. They suspected her to be pregnant in January 2022. They examined her and it was proved that she was pregnant.

PW3 proceeded to say that PW1 was a student with registration number 2369. Her serial number in the register was number 10. He tendered the



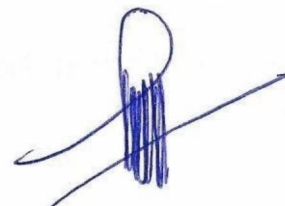
attendance register, exhibit P1. It shows that she was present between 27/1/2022 up to 31/1/2022 but is absent since then to date.

PW4 Lucy Mwanakulya (32) is also teacher at the school. She told the court the way she suspected PW1 to be pregnant and proved that she was pregnant. She was proved to be pregnant by PW5 Dr Emily Malaki (49). The latter said that he received the girl on 14/2/2022 at 13/30 hours for pregnant test. He examined and proved that she was pregnant. It was 27 weeks, about 7 months. This was confirmed through ultra sound.

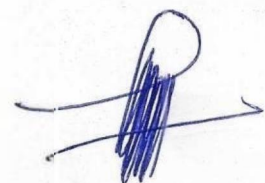
DW1 Ibrahim Bukuru (41) agreed that he is a traditional medicine man. He went on to say that he works in the presence of his wife and other assistants. He never worked alone. He admitted to receive and treat PW1 in July 2022. He wondered the reason as to why he was arrested. He called DW2 Nashon Charles (32) who was his assistant. He said that he received and attended PW1 in May 2022. She was treated and left on 2/7/2021.

The trial magistrate did not find doubt in the prosecution case. Based on the above evidence, the appellant was found guilty and convicted.

Submitting on grounds one, two and three, counsel for the appellant told the court that there was no evidence to prove the case beyond reasonable



doubts. He said that exhibit P1 shows that the accused was present in school in July 2021 but later testified that he was present only between 27/1/2022 and 31/1/2022. He went to say that PW4 who is said to have gone to the police station did not say that he went to the police station. He submitted that other witnesses said that they took PW1 to hospital on 31/1/2022 but the doctor, PW4, said that he examined her on 14/2/2022. No explanation was given on the delay to examine PW1, he said. He added that it was important to call the police who witnessed the examination. He called this as a situation of failure to call a material witness which is fatal to the party who has failed to do so. He referred the court to **Pascal Yoya @ Maganga v. R.** Criminal Appeal No. 248/2017 (CAT) and **Boniface Kundarika Tarimo v. R.** Criminal Appeal No. 350/2008 on this issue. He proceeded to say that the appellant was not arrested instantly. He referred the court to **Pascal Yoya** (supra) on this aspect saying it cast doubts to the prosecution case. He challenged the rubber stamp of the headmaster affixed on exhibit P1 saying it lack details. He said simbols 'A' and 'S' in the attendance register, exhibit P1, are not clear. He added that there was need for a DNA test which was not done. He referred the court to **Mashaka Gervas @ Kanyanye v. R.** Criminal Appeal No. 159 of 2020 on DNA issues. He challenged the

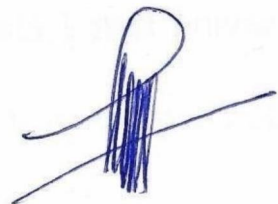


credibility of PW1. Counsel had the view that the court failed to consider the defence of the appellant. That, if it had done so, it could come out with a different decision.

In ground 4 counsel had the view that the judgment did not have the sentence making it illegal. In ground five it was submitted that the compensation of Tshs 1,500,000/= was reached without legal base.

Submitting in reply to grounds one and two, Mr. Raymond Kimbe state attorney said that page 10 of the record shows that the defence of the appellant was considered and found to be unreliable.

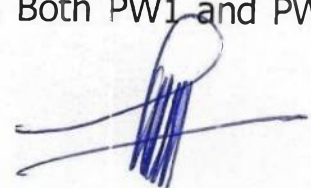
Submitting in reply to the third, fourth and fifth ground of appeal, he told the court that there was good evidence to prove the case beyond reasonable doubts. Explaining their duty to prove the case beyond reasonable doubts, counsel referred the court to **Woodmington v. DPP** [1953] AC 462 and **Magendo Paul and another v. R.** [1993] TLR 219. He submitted that there was evidence showing that the appellant used his position of a traditional healer to commit rape to the girl who was brought to him for treatment. This evidence came from PW1 and PW2. Counsel submitted that there was no consent because the appellant pretended that she was healing



her. He went on to say that PW2, PW3, PW4 and PW5 proved that she was pregnant. That, the appellant did have sexual intercourse with PW1 leading to the pregnancy. Counsel added that the accused could not cross examine on key aspects of the prosecution case leaving them intact. He referred the court to **Nyerere Nyangue v. R**, Criminal Appeal No. 67 of 2010 on the consequences of failure to cross examine.

Counsel proceeded to submit that the fact that the eye witness was the victim alone did not fault her evidence. He said that even the evidence of a single witness, if believed, can be a base of a conviction. He referred the court to **Gabriel Simon Mnyele v. R**, Criminal Appeal No. 437 of 2007, **Godfrey Gabinus @ Ndimbo and two others v. R**, Criminal Appeal No. 273/2017 and **William Ntumbi v. DPP**, Criminal Appeal No. 320 of 2019 on this point. Counsel submitted that true evidence of rape comes from the victim as per **Selemani Makumba v. Republic** [2006] TLR 379. He argued the court to dismiss the appeal.

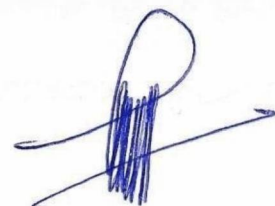
I had ample time to read the evidence on record and consider the submissions. I plan to discuss all the ground of appeal together. I will start by saying that I am in agreement with the Republic that there was good evidence to prove the case beyond reasonable doubt. Both PW1 and PW2



explained the way PW1 was sent to the accused for treatment on two occasions. The accused and his witnesses agree that she was brought for treatment. PW1 explained the way she was referred to the grave yard twice and raped on a pretense that it was part of the medication. She also explained the way she had sex with the accused at home in the absence of his wife. She then missed her periods and was diagnosed to be pregnant. Her age was proved to be below the age of 18 years. It was also proved that she was secondary school student. This was proved by PW1, PW2, PW3 and PW4. The teachers and the doctor proved that she was pregnant. The doctor estimated it to be 27 weeks, nearly 7 months. The PF3 was filled accordingly and tendered in evidence. The evidence shows further that the school ended there.

So we have a school student aged below 18 years who was found to be pregnant. Her classes were terminated on account of being pregnant. Witnesses points a finger to the accused.

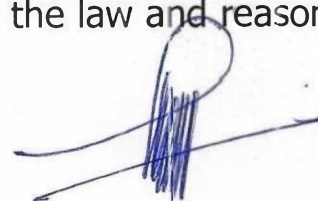
The accused could not cross examine on all key areas; being sent to the grave yard twice for sex, being sent to a separate room for sex in the absence of the wife, missing periods as said by PW1 who later was found pregnant as said by teachers, being a student and later being found pregnant. These



facts remained unchallenged and it is fatal. See **Anna Moises Chissano vs The Republic**, (CAT), Criminal Appeal No. 273 of 2019 and **Rashidi Sarufu vs The Republic**, (CAT), Criminal Appeal No. 467 of 2019.

The trial magistrate who had advantage of seeing the victim could not doubt her words. She believed her. She also believed her father and other prosecution witnesses. She could not believe the story of the accused. She rejected it and I think correctly so.

I could not see any doubt on the attendance register and the PF3. The register was properly filed showing the dates when she was present and when she was absent. It was properly certified and signed by the teacher. The PF3 was also properly filled and signed by the doctor. Both of them were signed by competent persons. My look of the evidence did not see that failure to conduct a DNA test vitiated the proceedings. There were still other pieces of evidence which could support the conviction including the evidence of PW1, PW2, PW3 and PW5. I could also see that the defence of the accused (which was very short) properly considered and rejected. The sentence is on record and did not appear to be excessive. It was within the range and legal. The order for compensation was also in line with the law and reasonable. I see no base for interference.



That said, I find the appeal devoid of merits and dismiss it. It is ordered so.



**L.M. Mlacha**

**Judge**

**7/6/2023**

**Court:** Judgment delivered. Right of Appeal Explained.



**L.M. Mlacha**

**Judge**

**7/6/2023**