

**IN THE HIGH COURT OF TANZANIA  
(MTWARA DISTRICT REGISTRY)  
AT MTWARA**

**CRIMINAL APPEAL NO 68 OF 2021**

*(Originated from Criminal Case No. 2 of 2021 Tandahimba District Court at  
Tandahimba)*

**RICHARD SIMON CHILUMBA.....APPELLANT**

**VERSUS**

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

***Date of Hearing: 22/11/2021***

***Date of Ruling: 24/12/2021***

**JUDGMENT**

**Muruke, J.**

Richard Simon Chilumba, was charged and convicted of the offence of rape, contrary to section 130(1) (2) (b) of the Penal Code Cap 16 R.E 2019 and sentenced to serve thirty years imprisonment. Being dissatisfied she filed present appeal raising 8 grounds listed in the memorandum of appeal. On the date set for hearing, appellant was in person. He thus requested this court to adopt his ground of appeal as his submission, prayer that was granted, by this court.

Respondent was represented by Wilbroad Ndunguru learned State Attorney who supported the appeal on ground of defective charge sheet. In his short submission he said.



"In this case victim is an adult aged 27 years. Charge sheet is defective for failure to include the element of consent. Appellant was charged under section 130 (1) (2) (b) of the Penal Code. In the particulars of the offence there was no element that showed the rape was without victim consent"

In totality learned State Attorney argued this court to allow the appeal. According to the records particulars of the offence in the charge sheet, read as follows:-

That Richard s/o Simon Chilumba is charged at 29<sup>th</sup> day of December 2020 at 14.00 hrs at Mwindi Village within Tandahimba District and Region of Mtwara unlawfully did rape one Arafa d/o Saidi.

From the above particulars of offence, issue of consent is not indicated. In her evidence PW1 (victim) at page 4-5 of trial court proceedings she testified that, she was chased and then raped by appellant. In his defence appellant admitted that they agreed to have love affairs with the victim, he did not rape the victim. Since charge sheet did not explain the ingredients of the offence, it is contrary to section 132 of Criminal Procedure Act Cap.20, R.E 2019, that explained how charge sheet should be. Had the charge sheet explained without consent, the ingredients of offence for an adult person would have been met.

There is no doubt in my minds that in a criminal trial a Charge Sheet is the foundation of any prosecution facing an accused person and provides him with a road map of what to expect from the prosecution witnesses during his trial. So much so, section 132 of the CPA restates that foundation following compulsive words:



132. Every charge or information **shall contain**, and shall be sufficient if it contains, a **statement of the specific offence or offences** with which the accused person is charged, **together with such particulars** as may be necessary for giving **reasonable information as to the nature of the offence charged** [Emphasis]


The important role of the charge sheet to alert the accused person of the important elements of the offence he is facing was discussed by the Court of Appeal in the case of **Magesa Chacha Nyakibali and Yohana Josia Manumbu vs. R., Criminal Appeal No.307 of 2013 (unreported)** where the particulars of offence of armed robbery contrary to section 287A of the Penal Code did not shoe out the important element of use of threat and to whom that threat was directed at. The Court held that:

.....As it is, this was a defective charge because important elements of the offence were not disclosed in order to allow the appellants the opportunity to meaningfully understand it and to be able to prepare their defences.

Court of Appeal insisted on the Principal in the case of **Mussa Mwaikunda v. Republic [2006] TLR 387** where it was observed that the principle has always been that an accused person must know the nature of the case facing him and that this can be achieved if the charge discloses the essential elements of an offence.

Restating the same principle of law in **Isidori Patrice. Republic, Criminal Appeal No.224 of 2007** Court of Appeal held that:-

"....It is trite law that the particulars of the charge shall disclose the essential elements or ingredients of the offence. This requirement hinges on the basis rules of criminal law and evidence to the effect that the prosecution has to prove that the accused committed the **actus reus** of the offence with the necessary **mens rea**. Accordingly, the particulars, in order to give the accused a fair trial in enabling him to



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prepare his defence, must allege the essential facts of the offence and any intent specifically required by law.....”

As records stand now, appellant was prevented from appreciating not only what form of defence he should marshal, but the important elements of which type of the offence of rape he was going to face. The non-mentioning of without consent in the particulars of the offence, limited appellant his right to defend himself.

On the above reasons and as correctly submitted by learned State Attorney Ndunguru, appeal has merits. Conviction is quashed, part of unserved sentence is set aside. Appellant is to be released, unless held with other lawful offence.



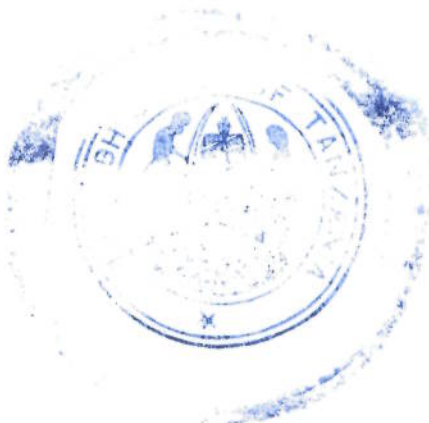
A handwritten signature in blue ink, appearing to read "Z.G. Muruke".

**Z.G. Muruke**

**Judge**

**24/12/2021**

Judgment delivered today in the presence of Appellant in person and Kauli George Makasi State Attorney for the Respondent.



A handwritten signature in blue ink, appearing to read "Z.G. Muruke".

**Z.G. Muruke**

**Judge**

**24/12/2021**