CRIMINAL APPEAL NO. 67 OF 2001

JUMA HAMIDU (Appellant)

VERSUS

THE REPUBLIC (Respondent)

(Appeal from the decision of the High Court of Tanzania at Dar es Salaam)

HC. Criminal Appeal No. 45 of 2000

THE JUDGMENT OF THE COURT

The appellant was charged with the offence of rape contrary to **sections 130 and 131 of the Penal Code**. He was convicted of the rape of Ashura Mwangia and sentenced to 30 years imprisonment by the trial magistrate who was satisfied that the case was proven to the required standard. The appellant's first appeal to the High Court was rejected under the provisions of **section 364 (1) (c)** of the **Criminal procedure Act 1985**. In this appeal, grounds 1 and 2 raised by the appellant indicate important legal points.

The victim, Ashura Mwangia, a 20 year old woman, claimed to have met the appellant on her way to the next village at about noon on 6.11.1999. The victim claimed that the appellant greeted and ordered her to sop. Once she stopped, the appellant allegedly dragged her to a nearby bush, cutting her hands with a razor to subdue her resistance; undressed and gagged the victim with her khanga then proceeded to rape her.

The said grounds of appeal presented:-

1. The appellate judge rejected the appeal without taking into account the principles to be considered in a summary dismissal under **(sic) 364 (1) (c) of the Criminal Procedure Act of 1985** as laid down in **Iddi Kondo v R**

2. The High Court and the lower court erred in law to convict the appellant based on the evidence of the victim (PW2) which was insufficient to prove the offence beyond all reasonable doubts.

The learned Principal State Attorney, Mr. Magoma, at first supported the conviction however, upon reflection he declined. He argued that the conviction was solely based on the evidence of PW2 and that the learned judge on the first appeal should have heard the appeal on merit and not invoking the provisions of **section 36 (1) (c) of the Criminal Procedure Act 1985** without hearing it. The court believed that there was merit in the submission of the learned Principal State Attorney due to there being a number of issues needing to be addressed regarding the evidence of PW2 and the medical evidence based on PF3 tendered by PW1. One being that, the PF3 Exh. P1, reported three cut wounds inflicted by use of sharp weapons which were described as dangerous. However, the medical examiner was not called to testify on the injuries. Furthermore, the circumstances of the appellant's arrest was an aspect that could have gone into detail if the appeal was heard on merit. See reference to **(Iddi Kondo v The Republic)** Criminal Appeal No. 46 of 1998 (unreported) which highlighted some principles.

Decision

The question of fact and law raised was that even though the case falls within principle 5, the sentence imposed of 30 years imprisonment was severe. Therefore the learned judge on his first appeal should have heard the appeal on merit. The court was of the opinion that as a second appellate Court they could not step into the shoes of the High Court by invoking its revisional jurisdiction under **section 2 (4) of the Appellate Jursidiction Act 1979**, as amended. For the said reasons, the court was in agreement with Mr. Magoma, that it was improper for the learned judge to reject the appeal summarily. Hence, the decision of the High Court of 5.9.2000 was quashed and set aside.