

CRIMINAL APPEAL NO. 540 OF 2016

ALLY RASHIDI (APPELLANT)

VERSUS

THE REPUBLIC (RESPONDENT)

(Appeal from the decision of the High Court of Tanzania at Dodoma)

The appellant was charged with an offence of rape contrary to **sections 130 (1) and (2) (e) and 131 (1) of the Penal Code, Cap. 16 R.E. 2002**. The appellant was convicted of the rape of Wantongela d/o Joseph and sentenced to life imprisonment by the trial District Court. The appellant appealed to the High Court of Dodoma which was unsuccessful. Therefore, lodging his second appeal containing four new grounds of appeal that were not raised in the High Court. The court settled that it was only going to look into matters highlighted during the trial and not the ones that were not raised or determined by the trial court or the High Court. It was alleged that on the 27th of August 2014 at about 10.00 hours, the appellant had carnal knowledge of Wantongela d/o Joseph, aged six years, at Kyengege village in Singida Region.

The said grounds of appeal:-

- (1) The courts below acted on the statement tendered by PW3 without according the provisions of **section 50 and 51 of the Criminal Procedure Act**.
- (2) The alleged statement was not corroborated as the grandfather said to be present at the time of recording did not testify in court.
- (3) The appellant was denied an opportunity to comment on the statement as per **section 172 of the Evidence Act Cap. 6 R.E. 2002**.
- (4) The requirements of **section 131 (2) of the Penal Code Cap 16. Vol. 1** regarding the age of an offender under the age of 18 years, were not considered.

The learned State Attorney, Ms. Mwakyusa, supported the appeal on the main ground that the case against the appellant was not proven beyond reasonable doubt; and the main reason being that the prosecution witnesses had failed to testify on the age of the victim. The learned State Attorney was therefore of the opinion that the Court should invoke **section 4 (2) of the Appellate Jurisdiction Act, Cap 141. R.E 2002 (the AJA)** and allow the appeal. The offence was charged under **(sections 130 (1) and (2) (e) and 131 (3) of the Penal Code)** (See full case). The referred cases were **Simba Nyangura vs. Republic, Solomon Mazala (Supra)** and **Charles Makapi vs. Republic**

Judgement

It was observed that the prosecution had failed to provide the age of the victim at the time the offence was committed, creating doubt in their case. Therefore, the conviction of rape under **section 130 (2) (e)** lacks legs to stand on. Hence the appeal was allowed, the conviction was quashed and the sentence imposed on the appellant was set aside.