

TANZANIA / JUDGMENT

# abdallah mohamed kindamba vs republic 2023 tzhclandd 16868 6 september 2023

COURT  
TANZLIIDECIDED  
6 September 2023

Source: media.tanzlii.org · Research copy typeset by Esheria. Not court-issued or certified.

IN THE HIGH COURT OF TANZANIA DAR ES SALAAM DISTRICT REGISTRY AT DAR ES SALAAM  
CRIMINAL APPEAL NO.61 OF 2023 (Original Criminal Case No. 02 of 2022 Kibiti District Court)  
ABDALLAH MOHAMED KINDAMBA APPELLANT VERSUS THE REPUBLIC RESPONDENT

## JUDGMENT

22/08/2023 to 06/09/2023 E.B. LUVANDA, J Abdallah Mohamed Kindamba the Appellant herein was convicted in absentia and sentenced to a term of thirty years for each count, for committing rape contrary to sections 130(1), (2)(a) and 131(1) of the Penal Code Cap 16 R.E. 2019 and impregnating a school girl contrary to section 60 A (3) of the Education Act No. 25/1978 read together with Government Notice No. 265/2003. The sentence was ordered to run concurrently. In the petition of appeal; the Appellant raised six grounds of appeal

1. That, the learned trial magistrate erred in law and fact in convicting the Appellant when the prosecution evidence adduced in court was in variance with the particulars of the offence in respect to the material date, and the age of the pregnancy the omission which cast doubt on the prosecution case against the Appellant.
2. That, the learned trial magistrate erred in law and fact in convicting the Appellant in both counts when there was no DNA test report was either conducted or tendered in court to prove whether or not the Appellant was responsible for the alleged pregnancy.
3. That, the learned trial magistrate erred in law and fact in failing to draw an inference adverse to the prosecution for failure to call the local functionaries to testify in court in respect of the Appellant's apprehension and connection with the case at hand.
4. That the learned trial magistrate erred in law and fact based on prosecution evidence which was barely improbable, doubtful, and discrepant in regard to the purported incident and the delay to send/take PW1 to the hospital for medical examination.

5. That, the learned trial magistrate erred in law and fact in convicting the Appellant without considering and/or according any weight to the Appellant's reasons of jumping a bail the omission which resulted to a serious error amounting miscarriage to of justice and constituted a mistrial.
6. That, the learned trial magistrate erred in law and fact in convicting the Appellant in a case where the prosecution did not prove its case against the Appellant beyond reasonable doubt as required by law. In his submission, the Appellant asked leave to additional grounds. Ground number one, the Appellant stated that there was no compliance to the mandatory provision of section 192(3) of the Criminal Procedure Act, Cap 20 R.E. 2022, arguing he was prejudiced in knowing the nature of the facts of the case, to enable prepared on Informed cross examination and defence. On the second additional ground, the Appellant submitted that the trial magistrate did not append his signature at the end of the evidence of every and each witness as required under section 210 (1)(a) Cap 20 R. E. 2019. In response to the two grounds above, Mr. Emmanuel Maieko learned Senior State Attorney submitted that the omission are not fatal and cannot make this court to pond in and overturn the lower court findings. He submitted that at pages six and seven of typed proceedings clearly show the preliminary hearing was properly conducted, at the last paragraph contains memorandum of agreed facts. He submitted that the facts on the preliminary hearing are to the road map to a accelerate trial on which the trial court passed on without any prejudice to the Appellant. He submitted that a trial was fairly heard, where a charge was read over to the Appellant and plea recorded, arguing all enabled the Appellant to have enough Information for him to defendant and cross examine. He submitted that all evidence adduced was signed at the end, In compliance to section 210(1) Cap 20 (supra). For ground number one. Is unmerited. At page seven of the typed proceedings, reveal all facts were read over to the Appellant and at the end the trial court extracted and prepared a memorandum of admitted facts where the Appellant appended his signature Including the prosecuting officer and the presiding magistrate. Therefore, the alleges prejudice Is an Illusory and Imagination. Above all admitted facts were not of such Incriminative nature as It pertained to the Appellants credentials, facts that he was arrested. Interrogated, arraigned In court and his plea taken. This ground Is dismissed. Regarding the second ground, non compliance to section 210(1) Cap 20 (supra). It Is true that the above provision require the presiding magistrate to append signature at the end of a testimony of a witness. In the records the trial court Indicated to have fully complied with the said provision. Even If we assume there was non compliance, still the Appellant did not say how he was prejudiced by the omission. To my view. In absence of complaint regarding authenticity of the court proceedings, a mere fact that It was not signed cannot be a ground for abrogating the entire proceedings. In the case of Yuda John vs Republic, Criminal Appeal No.238/2017, Court of Appeal at Arusha at page 14, it was held: "Much as we agree with both parties that the record does not indicate on how the trial magistrate complied with the requirements of section 210(3) of the CPA, we hasten to remark that the said omission did not cause miscarriage of justice on the part of the appellant. We say so because, in his complaint the appellant made a blanket claim without indicating

how he was affected. We are settled that such an omission is an irregularity which is curable under section 388 of the CPA...." Grounds of number one, two, three, four, five and six, to the petition of Appeal, the Appellant combined them and argued that the prosecution did not prove its charge against the Appellant beyond reasonable doubt for the following reasons, the evidence of PW1 (victim) was in variance with the particulars of the offence in respect of material time, citing Abel Masikiti vs. Republic, Criminal Appeal No. 24/2015 CAT; No DNA test report was tendered to prove that the Appellant was responsible with the said pregnant and rape; no investigator or arresting officer was called to testify; the defence case was wrongly disregarded or rejected while it raised reasonable doubt on the prosecution case. In response the learned Senior State Attorney submitted that the prosecution managed to prove their case beyond required standard. He submitted that the oral testimony from the victim that the Appellant is the one who had sex with her while she was a school girl suffice to prove the offences. To my view a complaint by the Appellant is merited. A charge sheet indicate that the alleged rape and impregnation occurred on 29/12/2021. In the entire testimony of the victim (PW1) nowhere said to have had sexual intercourse with the Appellant on the alleged 29/12/2021. On the contrary, PW1 suggest to have been detected by her parents to be pregnant following her departure at home on 26/12/2021, and upon resuming back home on 27/12/2021 it is when her parents took her to the office of Mchukwi Village. Even on cross examination by the Appellant, PW1 stuck to her guns on the facts regarding events of escorting the Appellant to the local dance (music) on 26/12/2021 which was on Sunday and resumption at home on 27/12/2021 which was on Monday. PW3 who is the father of the victim explained that they realized PW1 to be pregnant following her disappearance on 27/12/2021 and resumed back on 27/12/2021 at 19:30 hours. Admittedly, PW1 said she had sexual intercourse with the Appellant four times as from August 2021, but this narration does not support a charge and facts of a case which mention a specific date of 29/12/2021 as the only date PW1 and Appellant had sexual intercourse and impregnation. In the case of Abel Masikiti (supra), the apex Court held, I quote, "///" there is any variation or uncertainty in the dates then the charge must be amended in terms of section 234 CPA. If this is not done, the preferred charge will remain unproved and the accused shall be entitled to an acquittal. Herein, the variation was not cured by way of amendment of a charge. As such the argument of the learned State Attorney that the charge was proved beyond required standard is legally untenable. For that reason, the appeal is allowed, the conviction quashed and sentence of thirty years is set aside. The Appellant to be released otherwise held for other lawful purpose. \3RT Op . LUVAI^ O r c <5 HiDGE % /09/2023 s Judgment delivered in the presence of Ms. Rose Makupa learned State Attorney and the Appellant in person. E. LUV C5 u MUDGE 5- 06/09/2023

## Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

|                        |                                                                                                                                                                                                                                                                                                       |
|------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>ORIGINAL SOURCE</b> | <a href="https://media.tanzlii.org/media/judgment/302116/source_file/abdallah-mohamed-kindamba-vs-republic-2023-tzhclandd-16868-6-september-2023.pdf">https://media.tanzlii.org/media/judgment/302116/source_file/abdallah-mohamed-kindamba-vs-republic-2023-tzhclandd-16868-6-september-2023.pdf</a> |
| <b>CASE PAGE</b>       | <a href="https://chat.esheria.ai/case-law/tanzania/abdallah-mohamed-kindamba-v-the-republic-rape-tanzlii-2023">https://chat.esheria.ai/case-law/tanzania/abdallah-mohamed-kindamba-v-the-republic-rape-tanzlii-2023</a>                                                                               |

Prepared on 12 October 2026 · Esheria