

TANZANIA / JUDGMENT

alfa so msuya vs republic 2010

tzhc 277 29 september 2010

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TZHCDECIDED
29 September 2010

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IN THE HIGH COURT OF TANZANIA AT DAR ES SALAAM CRIMINAL APPEAL NO. 175 OF 2008
(Originating from Cr. Case No. 753 of 2007 Morogoro District Court Magistrate) ALFA s/o MSUYA
V. REPUBLIC Date of last Order : 20/ 7/2010 Date of Judgment : 29/9/2010

JUDGMENT

Shangwa, J. The Appellant Alfa Msuya was charged in the District Court of Morogoro with the offence of Rape C/SS 130 and 131 of the Penal Code Cap. 16 R.E. 2002. He was convicted and sentenced to 30 years imprisonment with 8 strokes of the cane. However, he was not satisfied with both conviction and sentence which were imposed on him by the District Court of Morogoro. He decided to appeal to this court. He has lodged seven grounds of appeal. These grounds are interrelated, and in their totality, they boil down to one ground that the trial Magistrate erred in law and fact in convicting him of the offence charged on insufficient evidence. The facts of this case are as follows:- Amina Juma who is the victim of the offence charged was a class seven Primary School student at Mafiga Primary School within the Municipality of Morogoro. At the time of the incident, she was 16 years old. The incident in issue took place in the Appellant's house at Kihonda area within the Municipality of Morogoro. It took place on 1/ 12/2007. The fact that at the time of the incident, Amina Juma was below 18 years of age was not contested by the Appellant and the fact that he had sexual intercourse with her was also not contested by him. In fact, he chose to say nothing in his defence. The evidence which was given by Amina Juma is crystal clear that on 1/12/2007 in the morning hours, the Appellant had sexual intercourse with her in his house at Kihonda area within the Municipality of Morogoro after informing her that he loves her. During her testimony in chief, she told the trial court that after the incident, she developed itches in her private parts and informed the Appellant about it. She said, the Appellant took her to St. Mary's Dispensary from where she was prescribed medicine and that he bought her pills to swallow. After her testimony in chief, the Appellant did not cross-examine her for the purposes of shaking her credibility. It means therefore that what she told the court was nothing but the truth. In convicting the Appellant, the learned trial Magistrate relied on the evidence of P. W. 1 Amina Juma and applied the provisions of S. 130 (2) (e) of the Penal Code Cap. 16 R.E. 2002 which provides as follows " S. 130 (2) A male person commits the offence of rape if he has sexual intercourse with a girl or a woman under

circumstances falling under any of the following descriptions-

- (e) With or without her consent when she is under eighteen years of age, unless the woman is his wife who is fifteen or more years of age and is not separated from the man ” As correctly found by the learned trial Magistrate, P.W. 1 Amina Juma and the Appellant Alfa Msuya were not wife and husband and that at the time of the incident, P.W. 1 Amina Juma was 16 years old. Therefore, I agree with the learned State Attorney Ms Eveta Mushi that in actual fact the Appellant was correctly convicted by the trial Magistrate. Upon conviction, the Appellant was sentenced to 30 years imprisonment with 8 strokes. In my view, the Appellant was correctly sentenced by the trial court. The sentence which was imposed on him was lawfully imposed. Therefore I dismiss this appeal in its entirety. Delivered in open court in the presence of the Appellant and Ms. Honorina Mushi State Attorney for the Respondent. A. Shangwa JUDGE 29/ 9/2010

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