

TANZANIA / JUDGMENT

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IN THE HIGH COURT OF TANZANIA MOROGORO SUB-REGISTRY AT IJC MOROGORO CRIMINAL APPEAL NO. 26173 OF 2024 (Arising out of Criminal Case No. 82 of 202 in the District Court Morogoro) DIRECTOR OF PUBLIC PROSECUTION APPELLANT VERSUS ABDALLAH ALLY RESPONDENT

JUDGEMENT

2gTH November 2024 MANSOOR,J. The Director of Public Prosecutions being aggrieved by the sentence passed by the District Court of Morogoro at Morogoro(Hon. M. C Kallomo-RM)dated the 24th of May, 2024, in which the accused person Abdallah Ally was Convicted for the offence of Rape contrary to 130(1),(2)(e) and 131(1) of the Penal Code[Cap 16 R.E 2022] herein after referred as"The Penal Code" and handed down a sentence of five years, have filed the Petition of Appeal in the High Court against the Sentence. In the Petition of Appeal, the appellant raised only one ground that the Trial Magistrate erred in law for Page 1 of 5 passing a sentence which is contrary to the provisions of Section 131 of the Penal Code. During the hearing of the appeal, the appellant was represented by the Learned State Attorney Daniel Makallo and the respondent was unrepresented. The State Attorney made a very brief submissions supporting the ground of appeal, he stated that the respondent was charged for the offence of Rape contrary to sections 130,1 and 2(e,) and 131 of the Penal Code. After full trial, the respondent was found with a case to answer, he gave his defence, and he was found guilty, convicted and was sentenced for Five Years Imprisonment. The Republic has filed an appeal challenging the Sentence. The state Attorney submits that the sentence is against the provisions of section 131 of the Penal Code. The minimum sentence under this section is 30 years and the maximum is life sentence. The counsel prayed that under section 131 (1) of the Penal Code, the sentence be revisited and be enhanced to 30 years. To fortify his submissions, the Counsel, refer to the case of Patrick Anthony Kingalu @ Dickson Kayombo vs Republic,Criminal Appeal No 646 of 2022[2024]TZCA 595(18 July 2024),reported on Tanzlii, In this case the Court of Appeal sitting at Dar es Salaam discussed the importance of giving proper sentence Page 2 of 5 on offences. The Learned State Attorney argues that the Magistrate had misdirected herself in the interpretation of this section, and the proper sentence is 30 years minimum and maximum is life sentence. In reply, the respondent said he had given the Notice to appeal as he was appealing against the conviction, but he was advised by the prison officer not to appeal, and so he did not file an appeal as he was ready to serve the five years. He prayed before the court that the sentence should not be enhanced. Section 131 of the

Penal Code is clear that whoever, commits rape on a woman under sixteen years of age shall be punished with rigorous imprisonment for a term which shall not be less than thirty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine. It is for the court, after recording conviction, to impose appropriate sentence as stated in the case of Patrick Anthony Kingalu @ Dickson Kayombo vs Republic,(supra). It is for the court to decide what sentence should be imposed given the range available. Undoubtedly, in section 131 of the Penal Code the Page 3 of 5 sentencing court is bound by laying down the minimum sentence (not less than) and it can also lay down the maximum sentence. If the minimum is prescribed under the law, the sentencing judge/ magistrate has no option but to give a sentence "not less than" that sentence provided for. Therefore, the words "not less than" occurring in section 131 of the Penal Code must be given their natural and obvious meaning which is to say, not below a minimum threshold and in the case of Section 131 of the Penal Code these words must relate to an offence punishable with a minimum of thirty years' imprisonment. The offence of statutory rape is punishable with imprisonment for not less than thirty years, and this is the minimum punishment the court can pass. It could also pass a sentence of more than thirty years up to life imprisonment but never below thirty years. The offence for which the respondent was convicted with is punishable with imprisonment for a term which shall not be less than thirty years but which may extend to imprisonment for life. Indeed, the trial Magistrate had misdirected herself to pass a sentence less than that which is prescribed under section 131 of the Penal Code. In the situation, the appellate court is empowered to enhance the sentence and this was stated in the case of Elibariki Naftali Mchomvu vs Republic Page 4 of 5 Criminal Appeal No 332 of 2019, Court of Appeal at Moshi in which it was held that; the first appellate court rightly intervened and enhanced the sentence to mandatory life imprisonment in consonance with the dictates of section 154 (2) of the Code. We find no merit in the complaint and proceed to uphold the enhanced sentence." Since the trial Magistrate has no mandate to impose a lesser sentence than the minimum prescribed, this appeal is allowed, and the sentence passed by the Trial Magistrate is quashed and the respondent Abdallah Ally is sentenced to Thirty (30) Years Imprisonment. DATED AND DELIVERED AT MOROGORO THIS 29th DAY OF A NOVEMBER 2024. LU X K ■vV L. MANSOOR JUDGE 29/11/2024

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