

TANZANIA / JUDGMENT

elias njile versus republic

2023 tzhc 19988 7 august 2023

COURT
TZHCDECIDED
7 August 2023

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

Source record

IN THE HIGH COURT OF
THE UNITED REPUBLIC OF
TANZANIA:

IN THE DISTRICT REGISTRY OF SHINYANGA
AT SHINYANGA
CRIMINAL APPEAL NO. 21 OF 2023
(Originating from Criminal Case No.21/2020 Simiyu Resident's
Magistrate Court) Court)
ELIAS N1ILE•.....•.....
.-
II APPELLANT~:~:
. I
VERSUS
THE REPUBLIC RESPONDENT'

JUDGMENT

17h July & 7h August 2023 F.H. MAHIMBALI, J. The Appellant ELIAS 5/0 NJILE, was charged in the Resident's Magistrate Court of Simiyu at Bariadi for the offence of Severe Trafficking in Person Contrary to Section 6 (1)(2) (a) and section 4 of the Anti - Trafficking in Person Act, No.6 of 2008. The brief facts of the case statethat, the appellant was arrested for severe trafficking in person for transporting a disabled child aged seven years from Tanzania to Kenya to conduct begging activities. 1 The appellant after being interrogated appears to have confessed in such illegal business. After a full trial, the trial court found him guilty with the offence and sentenced him to pay fine of Tshs 50,000,000/= and in default to serve ten (years) imprisonment. The appellant has been aggrieved with the conviction and sentence hence this appeal with three grounds whose major complaint is to the effect that the prosecution had weak evidence to warrant his conviction, there was no caution statement tendered before the Court to prove the guilty of the offence and that there was no independent witness during the trial of the case. At the hearing of this appeal the appellant was present in person while Ms Mboneke Ndimubenya, learned State Attorney represented the Respondent/ Republic. The appellant in arguing for his appeal adopted his grounds of appeal and prayed that his appeal be allowed. On the side of the

Respondent, Ms. Mboneke resisted the appeal 1 by the appellant and thus she supported conviction and sentence entered • by the trial court. 2 Ms. Mboneke submitted that in regards to the first and third grounds of appeal, there is no number of witnesses required to prove the case. She cited Section 143 of the Evidence Cap 6 Re 2022 to the effects. She added that the main duty for the prosecution is to prove the charge beyond reasonable doubts. During the trial, PW1 testified how he had received information from his superior to go in Kenya for the purpose of making follow of the victim who was trafficked for begging business. Ms. Mboneke also added that the appellant admitted himself that he trafficked the victim after an agreement with the victim's mother. She referred this Court at page 13 of the typed proceedings of the trial court. She added that the appellant is the one who led the police officers up to the home place of the victim's mother namely Nyarumbe Masanja. Ms Mboneke referred this Court at page 4 of the typed proceedings. Ms. Mboneke further submitted that such evidence was corroborated by the evidence of PW2 (mother of the victim), who admitted that her child was taken by the appellant to Kenya as consented by the grandmother of the said Child. Such evidence was also corroborated by testimony of PW3. 3 I PW3, testified before the Court how he had received police officers from Kenya who were in search of the appellant for the offence of trafficking a person contrary to the law who then instructed PW1 to escort ' them for search of the appellant. PW4 (grandmother of the Victim girl), admitted to have met the said appellant and took the victim to Kenya for street begging business. And thus, soon after commencement of the said business, PW4 admitted to have been receiving money from the appellant (PW4). With all such, Ms Mboneke submitted that the prosecution's evidence fully established that the child was trafficked to Kenya and that the appellant was the one responsible with the said trafficking as charged. Ms. Mboneke arguing on the second of ground of appeal, she boldly stated that there was confession by the appellant through his caution statement. She added that at page 15 of the typed proceedings of the trial court clearly provides that the admission of the caution statement was not disputed. Caution statement was admitted as an exhibit P1 and thus the claims by the appellant is an afterthought. And therefore, Ms Mboneke pressed for dismissal of the appeal for lack of merit. In his rejoinder, the appellant reiterated what he submitted in chief .. 4 After I have heard both parties to the suit, I have now to determine the appeal and the issue to be determined is whether this appeal has been brought with sufficient cause. I have thoroughly gone through the petition of appeal, records of the trial Court and submission by both parties. The appellant was arraigned before the trial court for an offence of I severe trafficking in person where by, it was alleged that the appellant trafficked the victim aged seven years from Tanzania to Kenya for the aim f of conducting begging business. I have gone through the trial court records in regards to the evidence led to the conviction of the appellant. PW1, testified that he escorted three police officers who were ill search of the appellant. At the time the police officers had appellant's identity Card, and the appellant was accused for severe trafficking of a person. They wanted to be taken to Ipililo village within Maswa District in Simiyu region where the appellant resides. PW1 while with the police officers went together and found the appellant while at Ilambambasa village within Maswa District and accordingly arrested him. 5 After a thorough interrogation the appellant admitted to know the victim and that he is the one who took the child to Kenya after had agreed with the child's mother that he can take the child to Kenya to do beggin~ activities and

whatever they got they shall distribute the proceeds amongst themselves. PW3, the grandmother of the victim testified that, the victim is now ~ in Kenya he was taken there by Elias Njile, after she had given him that child. Elias Njile after has approached her and told her that she should give him a child and whatever money that he can get he shall be giving a portion to her. She agreed and thus the appellant he left with the victim. She admitted having already received three installment proceeds of 50,000/=, 60,000/= and 100,000/= PW4, told the court that in course of interrogation, she met with: certain woman called Grace Simon while with a child on a wheel chair, she interrogated that woman and that woman said that she was employed by Elias Njile to move the disabled child on the street begging of money and the money obtained in the course was distributed amongst themselves. 6

- ~ . I From the above piece of evidence, the question to ask is one, was there sufficient evidence to warrant conviction against the appellant calling it a water tight evidence incriminating the appellant? I have critically scanned the prosecution's evidence; it appears the whole case is centered on the testimony of PW4 who identified herself as Kenyan Police officer in the DCI's office with eight years working experience. In her testimony via Video Link from Kenya, she testified that it was on 28th February 2020 while at Court premises - Shaurimoyo premises she met one Grace Simon and a disabled child by name of Nkwabi Njile. She became interested to inquire on them. She took them to her office and started interrogating them where then the said Grace Simon stated that she was employed by one Elias Njile (the appellant) to move the disabled child for street begging of money. That they wer~ distributing the proceeds thereof. When they went to search to her home/residence they were living, they found Kshs. 6938/= and four Tanzanian voting cards by NEC by names of Nkwabi Jilala Jilala Elias Njile Nyiga, Rahel D. Guddi, Nkinda Jilala and of Elias Njile. They arrested the said Grace and started tracing for the appellant who was then arrested here in Maswa (Tanzania). She alleges that the said Grace Njile has been charged for human trafficking. 7 ---I My concern is, whether this evidence has established the charged offence beyond reasonable doubt. The law is, who alleges must prove: This being a criminal case, the proof has always been beyond reasonable doubt. The prosecution must have given sufficient evidence capable to convict an accused person. That being the case, it is worthy and t instructive to look at what section 110 and 112 read together with section 3 (2) (a) of the Evidence Act [Cap 6 RE 2019] in as far as the burden and standards of proof is concerned. These two concepts were interpreted in- the case of Woodmington Vs OPP, (1935) AC 462. In the case of Christian Kale &.AnotherVs. The Republic (1992) T.L.R 302 CAT and John Makorobera &. Another Vs. The Republic (2002) T.L.R 296; which insistently held that the accused person should only be convicted I of an offence he is charged with on the basis of the strength of the prosecution case not on the weakness of his defense. In line with this principle of burden and standard of proof, another important principle > , becomes necessary as enunciated in the case of the case of Mariki ~ George Ngendakumana Vs The Republic, Criminal Appeal No. 353 of 2014 CAT - Bukoba (unreported), which inter alia held that: "It is the principle of law that in Criminal Casethe duty of the prosecution is two folds, one to prove that the offence 8 was committed, two that it is the Accused person who

committed it' So far, as per evidence in record, there is no evidence given in court which established that the said child was actually in begging business as alleged. What is vivid, is the taking of the said child from Maswa to Kenya by the appellant. But there is no further essential evidence that the said child was actually in begging business as alleged but only being arrested by the said PW4. There is no evidence that Grace was actually moving that child for begging business. Worse of the story, is who is the Victim child. Is he Nkwabi Njile or Masanja Nkuba? There is a confusion on that Whereas the charge names the victim by name of Masanja Nkuba, pw4 l names the victim as Nkwabi Njile. Which is which for the court to take: Further terrible story, there is nothing said of the whereabouts of the victim child. My analysis of the prosecution's evidence in this matter, in the absence of the said Grace Simon's testimony, PW4's testimony is hardly direct evidence but hearsay evidence. It was expected either both Njile and Grace are charged or that Grace becomes witness of the case. There is no such proof that Grace has been charged as alleged. There neither evidence from the victim child herself that he was involved in begging business as charged. How can we firmly believe that the said Grace Simon 9 was the one moving the victim girl in the absence of her evidence in court: as stated by PW4? With the above analysis and findings, this Court finds this appeal being brought with sufficient cause. All that has been established is the transfer of the said child to Kenya and not otherwise. In the absence of proof beyond reasonable doubt how the appellant was involved in the commission of the alleged offence, I have good reasons to differ with the trial Court's findings and therefore I allow the appeal, set aside conviction and sentence meted by the trial Court against the appellant. I hereby order his immediate release unless lawfully held by other causes. However, regarding the victim girl who is still in custody at Nairobi Children's home, the Republic is hereby directed to make sure the victim child is returned home immediately unless there is a legal cause necessitating his further stay in Kenya in which the government should be, very aware of. DATED at SHINYANGA this 7th day of August, 2023. F.H. Mahimbali Judge 10

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.

ORIGINAL SOURCE https://media.tanzlii.org/media/judgment/258814/source_file/elias-njile-versus-republic-2023-tzhc-19988-7-august-2023.pdf

CASE PAGE <https://chat.esheria.ai/case-law/tanzania/elias-so-njile-v-the-republic-traffickinginpersons-tzhc-2023>

Prepared on 13 October 2026 · Esheria