

TANZANIA / JUDGMENT

ERICK JOHN GEORGE JUDGEMENT 0001

COURT
TANZLIIDECIDED
10 March 2025

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

THE UNITED REPUBLIC OF TANZANIA (JUDICIARY) THE HIGH COURT (MUSOMA SUB REGISTRY AT MUSOMA) CRIMINAL APPEAL No. 24832 OF 2024 (Arising from the District Court of Musoma at Musoma in Criminal Case No. 40 of 2023) ERICK JOHN @ GEORGE.....APPELLANT Versus THE REPUBLIC..... RESPONDENT JUDGMENT 10.03.2025 & 24.03.2025

Mtulya, J.: Mr. Erick John @ George (the appellant) contests conviction and sentence which was passed by the District Court of Musoma at Musoma (the district court) in Criminal Case No. 40 of 2023 (the case). The appellant was arraigned in the district court for allegation of rape contrary to sections 130 (1), (2) (e) and 131 (1) of the Penal Code [Cap. 16 R.E. 2022] (the Penal Code). It was alleged by the prosecution that the appellant had a carnal knowledge with the victim girl aged ten (10) years at Makoko Zanzibar area within Musoma District in Mara Region on 21st of June 2022. After full hearing of the case, the appellant was convicted and sentenced to serve thirty (30) years in prison. The appellant was aggrieved by the decision of the district court in the case hence approached this court complaining in a bunch of issues, namely, in brief, that: first, the charge of rape was not proved; second, evidence of PW3 and exhibit PEI did not i qualify to corroborate victim's evidence as PW3 did not show his qualifications; third, the appellant's defence was not evaluated; fourth, the victim's testimony was not sworn; and fifth, contradiction of evidences produced by PW1 and PW2 and failure to call material witnesses. The complaints were scheduled for hearing on 10th March 2025 and the appellant had appeared in person whereas the respondent had marshalled Ms. Agma Haule, learned State Attorney. In registering relevant materials in favour of the appeal, the appellant had followed the sequence of his reasons of appeal and in the first ground he stated that the charged offence of rape was not proved in accordance to the standard required by the law as the prosecution had remained silent on sperms found at the victim's private part. According to the appellant, PW3 had testified to have found sperms in the victim's private part, but he declined to examine and compare with the appellant's sperms. In the appellant's opinion, this was important issue to be resolved by the district court and the question before it was supposed to be the sperms belong to which person? In the second ground, the appellant submitted that the evidence of PW1, PW3 and Exhibit PE.1 area at variance and that the medical doctor (PW3) who had produced exhibit PE.1 (PF.3) in the case had no any qualification on the job and had declined to 2 show his identification card, and further his evidence did not tally with the victim's evidence. The appellant submitted further that the victim (PW1) testified to have been raped three (3) times in different occasions and claimed

that she was forced to remain silent otherwise she will be attacked by panga, and she remained silent. According to the appellant, that is not possible for her to be raped and threatened three (3) times and remain silent before his parents. In the third reason of appeal, the appellant submitted that the district court had rendered down unfair conviction and sentence due to the failure to evaluate and consider the defence case. In his opinion, the prosecution side at the district court had produced evidence with a lot of faults and if it had considered the defence case, it would not have issued such a judgment. In the fourth complaint, the appellant submitted that the victim had produced unsworn evidence during the hearing of the case and finally it was heavily relied by the district court to render conviction to the appellant. The appellant submitted further that the evidence of the victim was not corroborated by any other evidence hence makes it unreliable to produce conviction against him. In the last ground of appeal, the appellant submitted that witness PW2 had testified to have arrested the appellant at the 3 village by use of yowe species of clatters, which was witnessed by several villagers, who were material witnesses on part of the respondent, but had declined to summon them to testify, leaving only uncorroborated and contradictory evidences of PW1 and PW2. In substantiating his submission, the appellant stated that PW1 and PW2 were victim and his father respectively, and that their testimonies are in contradictory as PW2 had testified that the victim went to milling machine, whereas the victim had remained silent on going to the milling machine. The appellant submitted further that witness PW2 had testified to have found his children playing with exhibit cell-phone which belongs to the appellant, but it was not brought in court to justify it belongs to him in order to establish the case. In replying the reasons of appeal, Ms. Haule had followed the sequence of grounds of appeal registered by the appellant. In her submission, Ms. Haule stated that the first ground relates to sperms and examination of the same, but the reply is found at page 14 of the proceedings of the district court which shows that a medical doctor Martin Joseph Pamba (PW3) to have testified that man sperms were found at the victim's private part and it was not his duty to move further to know who had raped the victim. According to Ms. Haule, the appellant in his submission was producing general reply on the subject, but PW3 stated specifically 4 that there is no requirement of examining accused persons who are allegedly committed rape. In the opinion of Ms. Haule, in rape cases, the evidences of medical doctors are brought into cases to complement evidence of victims by stating what they have witnessed to the victims. According to her, it is the victim who had cited the appellant to have committed the offence and in any case issues of examination and comparison of sperms do not defeat the merit of the case as the subject of sperms comparison has never been one of the requirements of proving rape cases in courts of law. Ms. Haule submitted further that the respondent had established its case beyond reasonable doubt as it proved two (2) necessary elements, viz. first, penetration; and second, age of the victim. In accordance to Ms. Haule, this is a statutory rape which was committed to the victim below the age of fourteen (14) years and it is the victim who stated that she is ten (10) years and studies at standard four (4) of primary education and also had testified on penetration of penis to her private part by the appellant, and that the evidence was corroborated by PW2, who had found the victims at the appellant's residence. In substantiating her submission, Ms. Haule had cited pages 7, 8, 11, 13 and 14 of the proceedings of the district court stating that the record in totality shows by implication that the victim was below the age of fourteen (14) years and the

move is supported by 5 the Court of Appeal decision in *Wilson Elisa @ Kiungai v. Republic*, Criminal Appeal No. 449 of 2018, at page 8 of the decision, which had interpreted section 122 of the Evidence Act [Cap. 6 R.E. 2022] (the Evidence Act) to consider assumed facts in proceedings of the trial court. On the second ground of appeal, Ms. Haule stated that the appellant had produced two (2) complaints, first on the silence of the victim after the rape incidents and second, qualifications of the medical doctor (PW3). In her opinion, it is not always the case that in rape cases victims may say in open or secret on what they have gone through or transpired to them depending on circumstances of each particular case. In the instance case, according to Ms. Haule, the victim, at page 8 of the proceedings of the district court, stated that she was raped three (3) times by the appellant with threats of slaughtering her. Ms. Haule submitted further that the decline of the victim to report the incidents of rape was caused by threats of the appellant and such circumstance is appreciated in the case of *Wilfred Andisai Mmari v. Republic*, Criminal Appeal No. 164 of 2020, at page 11 to 13 of the decision, where a child had remained silent for three (3) days after the rape incident. In her submission, Ms. Haule stated that victim had remained silent two (2) times and in the third time, the appellant was arrested and that failure to report a 6 crime at the earliest possible does not defeat criminal case involving sexual violence against children of tender age. Regarding the doctor's qualifications, Ms. Haule submitted that page 13 of the proceedings of the trial court shows that PW3 has a Diploma in Clinical Medicine with two years' experience and stated his qualifications. In the view of Ms. Haule witness medical officer was sworn to state the truth of the matter and he stated the truth of the matter and, in any case, there is no law which requires professional to go to court with their identification cards, certificates or qualification documents. According to Ms. Haule, the appellant was also granted leave to ask PW3 questions related to his qualifications, and was replied at page 15 of the proceedings, and just after the reply, the appellant had ended and closed his questions towards PW3. In the submission of Ms. Haule, PW3 was competent witness to testify on PF.3 as clinical officer at the trial court as it was held in the case of *Charles Bode v. Republic*, Criminal Appeal No. 46 of 2016. Ms. Haule submitted that the third reason of appeal is related to evaluation of evidence in the case, but reading the judgment of the trial court, it is obvious that the learned magistrate had produced and considered evidence of all parties before reaching her conclusion. In the submission of Ms. Haule, the learned magistrate had evaluated the alibi defence of the appellant at pages 13 and 14 of the judgment, but had declined it for want of 7 application of section 194 (4) and (5) of the Criminal Procedure Act [Cap. 20 R.E. 2022] (the Criminal Procedure Act). In the fourth reason of appeal, Ms. Haule stated that there are two (2) complaints, namely; first un-sworn evidence of PW1 and second, calling of materials witnesses during trial at the district court. According to Ms. Haule, the evidence of PW1 falls under section 127 (2) of the Evidence Act [Cap. 6 R.E. 2022], which does not require sworn-in of child witness, but a promise to tell the truth, and at pages 6 & 7 of the proceedings, PW1 was examined by the trial court and had promised to tell the truth before the court. Ms. Haule submitted further that the record shows PW2 and PW1 had mentioned other persons who came at the yowe place, but were not summoned. However, according to her, in rape cases, the evidence of the victim is very important and establishes a case. In her view, Ms. Haule, thinks that the victim in the present case had testified and received corroboration from her father who went in search of her at the

milling machine and appellant's residence hence there was no need to call other witnesses to repeat the same evidence during hearing of the case. Ms. Haule also produced section 143 of the Evidence Act stating that it is the weight of evidence and not number of witnesses in establishing criminal cases. 8 In the last reason of appeal, Ms. Haule submitted that it is generally based on exhibit cell-phone to be tendered as an exhibit during hearing of the case. In his opinion, the cited cell-phone is not a material exhibit in rape cases as it was previously indicated in the case law and it is not one of the elements to prove the incident of rape against the victim. Finally, Ms. Haule submitted that the respondent is very much aware that the evidence of the victim is not a gospel truth, but evaluation of evidence is important as it was stated in the case of Hamis Halfan Dauda v. Republic, Criminal Appeal No. 231 of 2009, and that the evaluation of the evidence by trial court had found that the victim was testifying the whole truth before the court and all other legal necessary procedures were properly followed in rape cases to convict the appellant. Rejoining the submission of Ms. Haule, the appellant stated that the main issue in the case is whether the sperms found at the victim's private part were examined and compared with his sperms, the question which was not replied by the respondent. According to him, if there is no law which presses the requirement, how come they noted that it was the appellant who had committed the offence and the sperms belongs to him. In his opinion, it is true that the evidence of the victim is important and penetration is necessary, but the medical doctor stated that there were no bruises in the victim's private part and that how possible for child of ten

(10) years to have penetration without bruises. 9 On the second ground, the appellant submitted that he had prayed for identification card of the medical doctor PW3 and not all necessary documents of his profession, but it was not brought in court to substantiate his profession. With regard to silence on part of the victim, the appellant insisted his earlier submission that it is not possible for a child of ten (10) years to be raped twice and remain silent without informing her parents. Rejoining the third ground, the appellant stated that he knew that he will count on the defence of alibi, but he was in police custody hence it was impossible to call material witnesses to corroborate his point. According to him, the defence of alibi was necessary to be produced in the trial court, but it was not considered positively by the district court. On the fourth ground, the appellant insisted that the victim was not sworn and if she had promised to tell the truth, the it was totally wrong as she testified lies in the court and in any case, there are discrepancies of date in the judgment of the trial court. In supporting his argument, the appellant had cited the first page in the judgment which shows the incident had occurred on 21st June 2022 whereas the second page shows 21st June 2023. In his opinion, the discrepancies show the case was fabricated against him by the prosecution. In the last ground, the appellant had rejoined and insisted that PW2 had testified to have found his children playing with the 10 appellant's cell-phone, which is an important material, as the Swahili saying that those who are found in possession of goat's skin, are goat thieves. Regarding the decision of the Court of Appeal in Hamis Halfan Dauda v. Republic, Criminal Appeal No. 231 of 2009, the appellant supported the move arguing that the case had considered evidences of both parties. I have perused the record of the instant appeal and submissions of the parties. The record shows that the respondent had pressed a

charge against the appellant on 11th July 2023 indicating that the appellant is prosecuted for rape of the victim aged ten (10) years contrary to sections 130 (1), (2) (e) and 131

- (1) of the Penal Code. The incident is alleged to have occurred on 21st day of June 2023 at Makoko-Zanzibar area within Musoma District in Mara Region. During hearing of the case, the respondent had summoned a total of four (4) witnesses, namely: the victim (PW1), victim's father; Dr. Martin Pamba (PW3) and WP6075 Cpl. Neema (PW4). The proceedings of the district court at page 6 shows that the victim was questioned and asked whether she can promise to tell the truth during production of her testimony and at page 7 of the proceedings she promised to testify the truth of the matter. Her evidence in brief at page 7 and 8 of the proceedings shows that: I am student at Nyarigamba B. I am in standard four...on 21.06.2023, I was going to milling station...! ii found Erick at home with my young one. I took a bucket. Erick told me that he can escort me...those people in the milling station told me that they don't continue to give me service because the maize was just one kilogram. I left the bucket and returned back home. When I was on my way Erick came and hold my mouth and eyes. He started to push me to his home. He put me inside the house. He dosed the door and returned the bicycle...he undressed my clothes and his trouser and boxer. He inserted his penis into my vagina...Later father came and knocked the door. I didn't raise alarm because Erick dosed my mouth with his shirt... that was the third time Erick raped me. I failed to tell my parents because Erick said he will slaughter me...Erick was holding a knife while opening the door. He wanted to stab my father...One Mwanajeshi called the police officers. They came and took Erick and me to police station. I was interrogated. After that we went to hospital. I was examined and later returned home. The evidence of the victim was corroborated by PW2, who had testified before that court, at page 9 and 11 of the proceedings, that: On 21.06.2023, I returned home around 13:00 hours... and found Edward and Edson. They were playing 12 in front of the house. I asked where was the victim. They told me she went to the milling station, but that time Edward was holding a smart phone. I asked about that phone, he told me that the mobile phone is of Erick. I asked where is Erick, He told me that he escorted the victim. I decided to go to the milling station to look for the victim. I did not find her. I also didn't see Erick. I asked the people there and they told me that the one paid for service was a man...I went to the house. I tried to push the door. It was locked I knocked the door three times. Erick was silent... Later he asked wewe nani. I told him we fungua, ukifungua utanijua. He opened the door and was holding a knife wanting to stab me. He pushed me and started to run. I raised alarm, people responded. They started to chase him and arrested him. My daughter came out from the room...the victim said Erick raped me...we went to police station. We were given PF. 3 and went to Nyasho Health Centre. The child received treatment and later we returned home... The evidence produced by the other two witnesses were very brief. According to PW3, as recorded at page 13 of the proceedings of the district court, he holds a Diploma in Clinical Medicine with more than two years professional experience and working at 13 Nyasho Health Centre. In his testimony he stated to have examined the victim on 21st June 2023 and found her in general appearance without bruises or wounds, save for physical examination on private part which

had found her to have fluids without child hymen and was satisfied that the child was raped. According to PW3, he found man's sperms after conducting high vaginal swab test and normally sperms enter into a woman vagina through sexual intercourse. Finally, PW3 testified to have filled PF.3 for police record. On the other hand, PW4 had testified to have welcomed the victim at the charge room and interrogated her on a rape incident which was alleged to have occurred on the same day 21st June 2023 and provided her with PF.3 for hospital examination and treatment. According to PW3, she made follow-up of the PF.3 and prepared a case file for prosecution purpose. The materials brought by the respondent at the district court were replied by the appellant's alibi defence, which in brief shows, at pages 19 and 20 of the proceedings of the district court, that: On 21.06.2023, I was from my work. It was around 08:00 hours. At around 10:00 hours, I went to Musoma Government Hospital to donate blood. I left hospital premises around 11:00 hours in the morning...when I reached Makoko going to Zanzibar, at boda-boda parking, two boda-boda stopped me. They told me that 14 tuna ubuyu...! went home and returned to that kijiwe of boda-boda. One driver told me that there is one-man discussing me of disturbing his wife...I found PW2 coming with the giri. He asked the giri who raped you. The child said Erick...they started to raise alarm and arrested me...I was taken to police station...I did not question them I was arrested at boda-boda parking... I donated blood to the victim...! had a card but it was misplaced...raping a child and a wife are two different cases. Those boda are Thomas EHas and another boda. Thomas has already gone to Geita. I expected him to be my witness. I did not call doctors as witnesses. The district court in the case had considered all materials brought by the parties in the case and finally concluded, at page 15 of the judgment that: the prosecution evidence is sufficient to prove the charge against the accused beyond reasonable doubt., and that being the case I hereby find the accused, Erick John guilty of the offence of rape contrary to sections 130 (1), (2) (e) and 131 (1) of the Penal Code [Cap. 16 R.E. 2002] and accordingly convict him. The reasoning of the district court in favor of the decision is found at the same page 15 of the judgment that: the evidence of PW1 [was] the best evidence and [she] has passed the test of truthfulness. The evidence was successfully corroborated with that 15 of PW2 and sufficiently proved the involvement of the accused in the commission of the offence. Regarding the alibi defence produced by the appellant, the district court was of the view, at page 14 and 15 of the judgment that: ...the accused in his defence has raised the defence of alibi saying that at that particular time of occurrence of the incident he was at the hospital donating blood and later at boda-boda parking at Makoko area...the accused did not comply with section 194 (4) & (5) of the Criminal Procedure Act [Cap. 20 R.E. 2022]...the accused did not parade any witness who would establish that the accused was indeed elsewhere when the crime was committed or tendered any documentary proof to raise doubt over the prosecution case...I accord no weight on the defence of alibi raised by the accused. The appellant was aggrieved by both the conviction and sentence hence had approached this court in the appeal complaining on several reasons of appeal, as I will explain hereunder with their replies. First, the appellant complains that the respondent had failed to prove its case beyond reasonable doubt as the record is silent on establishing the owner of the sperms found in the victim's private 16 part, whereas the

respondent stated to have established its case beyond doubt as the materials brought before the district court in the case had established two (2) important elements of the indicated offence, namely: penetration and age of the victim. According to Ms. Haule, the offence of which the accused was prosecuted is statutory rape committed to the victim below the age of fourteen (14) years. In substantiating her submission Ms. Haule stated that the victim stated her age of ten (10) years and studies at standard four (4) of primary education and also had testified on penetration of penis to her private part by the appellant, and the evidence was corroborated by PW2, who had found the victims at the appellant's residence. I have displayed the record of the district court in this appeal and briefly highlighted the evidence of the victim (PW1) and witness PW2 and think the precedent of *Goodluck Kyando v. Republic* [2006] TLR 363) may take its course. The decision states that every witness must be believed, unless there are good reason to fault his reliability and credibility. In the instant case, the victim has clearly narrated the story on what had transpired on 21st of June 2023 and the evidence was corroborated by PW2. Witness PW1 and PW2 also involved government agencies of criminal investigations and examination of victims and appropriate officers PW3 and PW4 respectively, were summoned and testified in the district court. 17 The stories in terms of testimonies of PW1, PW2, PW3 and PW4 after the alleged rape incident do match each other. The facts show that the incident was reported to PW4 and the victim was examined by PW3 and PF.3 was tendered as exhibit PE.1 to substantiate penetration on part of the victim. I am aware the age of the victim is not clearly depicted on the record proceedings of the victim. However, it may be impliedly inferred the victim as a child of tender age from the testimonies of all the prosecution and defence sides. Both sides, including the appellant they were referring the victim as a child and there was no dispute on her testimony of studying at standard four, which shows that she was still at the tender age. Determination of age by facts or implication is part of practice in this state and the practice has already been blessed by the Court of Appeal in the decisions of *Wilson Elisa @ Kiungai v. Republic* (supra) and *Issaya Renatus v. Republic*, Criminal Appeal No. 542 of 2015, which had interpreted section 122 of the Evidence Act [Cap. 6 R.E. 2022] to consider assumed facts in the proceedings of the trial court. According to the Court of Appeal, at page 8 of the judgment in *Wilson Elisa @ Kiungai v. Republic* (supra): ...the victim appeared in court to testify and presented herself in court as being 16 years old, a form IV student at Kitefu Secondary School. These circumstances, carefully considered, lend assurance that she was a girl under the age of 18 years. Besides, these crucial facts were not challenged 18 by the appellant by way of cross examination or during defence which signified acceptance of being true. We find no merit in this complaint and dismiss it... On my part, I will follow the course well explained by the Court of Appeal in this quotation and finds the question of age of the victim is well replied in reading the totality of evidence on the record of appeal. In the second ground, the appellant had complained on the variances of evidence of PW1, PW3 and Exhibit PE.1 in the sense that PW3 had produced exhibit PE.1 (PF.3) in the case, but he had no qualifications on the job and had declined to show his identification card, and further his evidence did not tally with the victim's evidence. The appellant had submitted further that the victim (PW1) testified to have been raped three (3) times in different

occasions and claimed to have been forced to remain silent otherwise she would have been attacked by panga. According to the appellant, that is not possible for her to be raped and threatened three (3) times and remain silent before his parents. The Republic on the other hand thinks that it is possible for a child of tender age to be raped and remain silent when there are threats imposed to her and case law have shown that in the case of Wilfred Andisai Mmari v. Republic (supra). In the present case, the victim stated that she was raped three (3) times by the appellant with threats of slaughtering her. In such situation, and considering the age of the victim, I hold the 19 view that a child may remain silent to save her life from threats exerted on her hence a declined to report a crime of sexual violence at the earliest possible opportunity does not defeat criminal case involving a child victim of tender age. Regarding the doctor's qualifications, Ms. Haule submitted that page 13 of the proceedings of the trial court shows that PW3 has a Diploma in Clinical Medicine with two years' experience and submitted further that PW3 was a competent witness to testify and there is no law which requires professionals to go to court with their identification cards, certificates or qualification documents. I have read the record and found that PW3 was summoned to testify and stated that he was at Nyasho Health Centre on 21st June 2023, and attended the victim, examined the victim and recorded facts in exhibit PF.3. I think he was brought in the district court as competent witness to testify on the result of his examination, and it is only that. He came to support the allegation on date of the examination and results of the examination (see: Charles Bode v. Republic, Criminal Appeal No. 46 of 2016). I have read the proceedings and judgment of the district court and found that the district court had heavily relied on the testimonies of PW1 and PW2 to render conviction to the accused, which this court support the move. I am aware that the appellant had complained that that the district court had rendered down unfair conviction and sentence 20 due to the failure to evaluate and consider the defence case. In the opinion of the appellant, the respondent at the district court had produced evidence with a lot of faults and if the district court had considered the defence case, it would not have issued such a judgment. The respondents thinks that the appellant had produced alibi defence without producing notice as required by section 194

- (4) and (5) of the Criminal Procedure Act. This complain will not detain this court. The reply of the district court on the appellant's defence as displayed at page 14 and 15 of the judgment shows it all, that: the accused in his defence has raised the defence of alibi saying that at that particular time of occurrence of the incident he was at the hospital donating blood and later at boda-boda parking at Makoko area... the accused did not comply with section 194 (4) & (5) of the Criminal Procedure Act and that the accused did not parade any witness who would establish that the accused was indeed elsewhere when the crime was committed or tendered any documentary proof to raise doubt over the prosecution case. I think, there could be not more further questions than these asked by the district court. In brief, the appellant was escaping liability by telling lies, which in most cases may corroborate the prosecution case (see: Nkanga Daud Nkanga v. Republic, Criminal Appeal No. 316 of 2013). In the instant case, the material facts show that there are two boda-boda, Thomas Elias and another 21 boda who were material witnesses to support the appellant's alibi defence. However, the appellant

did not cite or call them to testify in his defence. I am aware the appellant had submitted that Elias Thomas had already left Makoko for Geita. However, considering the gravity of the offence and its associated penalties, the appellant was supposed to use all available means to search for Elias Thomas. I understand detainees in police or prison custody, may have no control of their actions, especially in calling individual witnesses. However, the appellant had other witnesses to call or exhibits to tender via official guardians in police or prisons authorities and Musoma Government Hospital. The appellant was attended by medical doctors, was registered in Hospital Attendance Register Books and was using official blood donation card. Either the doctors could have been issued court summons or the appellant could have produced his blood donation card. However, all the procedures were declined by the appellant. In the fourth reason of appeal, the appellant had complained that the victim had produced unsworn testimony during the hearing of the case and finally it was heavily relied by the district court to render conviction to him and in any case, the evidence of the victim was not corroborated by any other evidence hence makes it unreliable to produce conviction against him. 22 In responding to the complaint, Ms. Haule stated that there are two (2) complaints in the reason of appeal, and the first is replied by section 127 (2) of the Evidence Act, which does not require sworn-in of child witnesses, but a promise to tell the truth, which was promised by PW1, and second is replied by section 143 of the Evidence Act and Evidence of PW1 and corroboration of PW2, which establish the case without further witnesses. According to her, it is the weight of evidence and not number of witnesses in establishing criminal cases. I have glanced the provisions of sections 127 (2) and 143 of the Evidence Act and the instant record of appeal. Section 127 (2) provides that: a child of tender age may give evidence without taking an oath or making an affirmation but shall, before giving evidence, promise to tell the truth to the court and not to tell any lies whereas section 143 provides that: no particular number of witnesses shall in any case be required for the proof of any fact. The proceedings of the district court at pages 6 and 7 show the following materials: PW1: Victim, 10, Student, Standard IV, Nyamihongo, Christian [The victim] has been interrogated to ascertain whether she understands the duty of speaking the truth and if she knows the meaning of oath. Court: In which days are you going to worship PW1:1 used to go to worship on Sunday 23 Court: In which dhehebu do you belong PW1:1 am a catholic Court: How many subjects do you study in your school? PW1: In our class we have six subjects Court: do you know the head teacher of your school? PW1: yes, her name is Dora Mshana Court: Can you promise us that you are going to speak the truth? PW1:1 promise that I am going to speak the truth. Having scanned the contents of pages 6 and 7 of the proceedings, and page 6 in the judgment of Wilfred Andisai Mmari

- v. Republic (supra), I am persuaded to believe that the victim had complied with section 127 (2) of the Evidence Act and the district court had well trusted her testimony. Reading the evidences produced by PW1 and PW2 it is vivid that the witnesses were telling the truth hence the respondent had established its case against the appellant. The need of further witnesses was not necessary under the circumstances of the instant case. Section 143 of the Evidence Act shows that the truth of the matter or information does not depend on

numerical value of witnesses, but weight, credibility and quality of evidence produced during hearing of cases (see: Hemedi Saidi

v. Mohamed Mbilu [1984] TLR 113, Yohanes Msigwa v. Republic

[1990] TLR 148) and Edward Nzabuga v. Republic, Criminal Appeal No. 136 of 2008). 24 In the last reason of appeal, the appellant complained that witness PW2 had testified to have found his children playing with exhibit cell-phone which belongs to the appellant, but it was not brought in court to justify it belongs to him in order to establish the case of rape. In replying the submission, Ms. Agma stated that the cited cell-phone is not a material exhibit in this case and is not one of the elements in proving the incident of rape has occurred. Before ending this appeal, two (2) issues are important to be stated in this appeal. First practice of this court and Court of Appeal shows that the best evidence in rape cases is that of the victim (see: Selemani Makumba v. Republic, Criminal Case No. 94 of 1999). However, the evidence may not be taken as a gospel truth (see: Hamis Halfan Dauda v. Republic, Criminal Appeal No. 231 of 2009). It is an evaluation of the evidences produced during hearing of the case at the trial court. In the instant appeal, the materials produced at the district court by witness PW1 and PW2 show that the respondent had established its case beyond doubt. Second, the appellant had complained on discrepancies of dates at the first page of the judgment of the district court for indicating the date of the offence as 21st day of June 2022 and second page citing the day of incident as 21st day of June 2023. In my considered opinion, this is a minor typo error, which cannot be relied by the appellant to defeat consistence of all materials displayed in the charge sheet and during hearing of the case. 25 In conclusion, I find this appeal has no merit whatsoever, and hereby dismissed in its entirety. I therefore uphold the decision of the district court in the case. It is so ordered. Rig^^pp^^explained to the parties. F. H/Mtul Judge 24.03.2025 Court: This Ruling was delivered in chambers under the seal of this court in the presence of the appellant, Mr. Erick John @ George and in the presence of Ms. Natujwa Bakari, Ms. Happiness Machage and Martha Mbosoli, learned State Attorneys for the Republic. Judge 24.03.2025. 26

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.tanzlil.org/media/judgment/344920/source_file/4b41380633e9edb8/ERICK_JOHN_GEORGE_JUDGEMENT_0001.pdf

CASE PAGE <https://chat.esheria.ai/case-law/tanzania/erick-john-george-v-the-republic-rape-tanzlil-2025>

Prepared on 13 October 2026 · Esheria