

TANZANIA / JUDGMENT

20180725 TZHC Mwanza

COURT
TZHCDECIDED
25 July 2018

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IN THE HIGH COURT OF TANZANIA AT MWANZA C/ CRIMINAL APPEAL NO. 141 OF 2018 . j .
JOHN MASANGULA .. ■ i 111 I I ■■ APPELLANT i
1]VERSUS 1 THE REPUBLIC. 11 . . . ~ ■ .1..... ■ ■ ■ . . - ■ .RESPONDENT
1 1 j

JUDGMENT

BEFORE: MAIGE, J ' At the time when the appellaht was being charged, he was a child of 17 1 years old, according to the charge sheet. Therefore, in terms of section 4(1) of I I the Law of the Child Act No. 21 of 2009 ("the Act"), he was a child. The judgment and proc~edings of the ~rial court indicate that he· was tried and i I punished as .an adult. He was found guilty of the offence of grave sexual abuse 1 ' and sentenced to a custodian. sente~ce of 20 years. He has been aggrieved by both the judgment and conviction henceforth the instant appeal. In his I memorandum of appeal, the appellant has enumerated five grounds of appeal I which in essence fault the trial m~gistrate in not considering, in its trial, conviction and sentence that the appeJlant was a child in law. I II I I I I · · In the conduct of this appeal, th~ appellant appeared in person and was not I (represented. The Respondent enj~yed the service of Miss. Sabina, learned advocate, which as I expected, sup~orted the appeal. She submitted, correctly in my view that; ·for the reason of n6t being a Juvenile Court· in terms of section 97(1) and (2) of the Act, the triJI court lacked jurisdiction to entertain the matter. I I ,. On my part, I entirely agree with the learned state attorney. The I . charge sheet lodged at the trial court inqicates that the appellant was 17 years old ' . when he was committing the offence.I In terms . of section 4 of the Act therefore j he was a child duly protected thereunder. j As rightly submitted for the I Respondent, criminal proceedings involving a child must be conducted by a Juvenile Court established under se~tion 97 of the Act. i have judicially noted that the District Court of Misungwi w~ich tried the matter is not a Juvenile Court. It has thus no jurisdiction to entertain! the matter. As held by the Cou~rt of Appeal I in FURAHA JOHNSON VS REPUB,IC C Appeal 'No. 452/2015, the trial of a child by a court which is not a Juvenile Court, is a nullity. I For those reasons, I find that this I appeal is meritorious and it is allowed. . I The conviction by the trial court is hereby I quashed and the sentence thereof set aside. Since the appellant has sefved the illegal sentence for more than 4 I ~ I 3~ I ! {]_ef,'J' (z ~-,,: 'ls ,,-. months, I find that an order for retrial will not be appropriate. I henceforth order the immediate release of the appellant from prison. () I It is so ordered. -· I. Maige Judge At Mwanza 25/7/2018 I . 3 Date: 25/7/2018 Coram: Hon. Maige, J Appellant: prese~t

Respondent: Sabina S/A_ B/ C: R. Emory person and Miss e Juclge 25/712018 4

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