

TANZANIA / JUDGMENT

joyce mganga vs the republic

2010 tzhc 204 20 october 2010

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TZHCDECIDED
20 October 2010

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IN THE HIGH COURT OF TANZANIA AT TANGA MISC. CRIMINAL

- REVISION N O .1 OF « 2010 [Originating from Criminal case No.315/2010 Handeni District Court] JOYCE MGANGA..... APPLICANT VERSUS THE REPUBLIC..... RESPONDENT Date of last order:20/10/2010 Date of Rul./Rev.Order; 27/10/2010 RULING/REVISIONAL ORDER Teemba, J; This court called for record of the District Court of Handeni in respect of Criminal Case No.315 of 2010 following the complaints that Joyce d/o Mganga was sentenced to a harsh and excessive sentence. The record of the District Court reveals that the Applicant Joyce Mganga was charged and pleaded guilty to the offence of perjury contrary to section 102(1) of the Penal Code, Cap. 16 of the Laws. It was alleged by the prosecution that on 14th day of September 2010 at about 10.00a.m. at Handeni District Court in Tanga Region, the Applicant being a witness in the criminal case no. 166 of 2010 - Republic Vs Mbaraka s/o Abdallah, knowingly did give false testimony. The facts were that, the applicant who was under oath, denied to know Mbaraka Abdallah, who was the accused in Criminal Case No. 166/2010 charged of raping the applicant. The Applicant admitted the facts as narrated by the prosecutor and the trial court entered a verdict of guilty. The Applicant was accordingly convicted on her own plea of guilty. In her mitigation, the applicant prayed for a lenient sentence stating that she is pregnant and that Mbaraka s/o Abdallah was her boyfriend. She added that the two fell in love when she was in form one' at Konje Secondary School. Eventually, the Applicant was sentenced to pay a fine of Tshs.400,000/- or two years imprisonment in default of payment of fine. These revisional proceedings are intended to look at correctness, legality and/or propriety of the sentence imposed by the trial court. The Applicant was present in person while Mr. Marandu, learned State Attorney, represented the Republic/Respondent in these proceedings. The Applicant* submitted that she was not able to pay the fine of shs.400/000/=. As a result, she is serving a jail term of two years. She added that she is almost seven months pregnant and 17 years old. It is her prayer for a lenient sentence so that when she gives birth, she may be able to resume her secondary education. Mr. Marandu supported the conviction but declined to support the sentence. He submitted that the fine imposed was on the high side whereas the Applicant who is a student, would not be able to raise that amount of money as she has no income. 2 In the upshot, and for reasons given above, this court is

satisfied that the sentence imposed by the learned Resident Magistrate was manifestly excessive. The sentence is therefore subjected to revision under powers conferred to this court by section 31 of the Magistrates' Court Act, Cap. 11 R.E. 2002. The sentence is accordingly set aside. I have noted that the Applicant has already served almost one month in jail as part of her custodial sentence. In the circumstances of this Application, I am of views that, this one month is sufficient to meet the ends of justice. She should be released forthwith unless held there for some other lawful cause. R- - 27/10/2010 Court:- The Ruling is delivered in the presence of the Applicant and Miss Magambo learned State Attorney, today in court. 5

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