

TANZANIA / JUDGMENT

20180928 TZHC Dodoma

COURT
TZHCDECIDED
28 September 2018

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IN THE HIGH COURT OF TANZANIA (DODOMA DISTRICT REGISTRY) AT DODOMA (DC)
CRIMINAL APPEAL NO. 39 OF 2018 (Original Criminal Case No. 208 of 1999 of the District Court
of Dodoma District at Dodoma) KAROLI U1•U ..u.....m....n...APPELLA11T
VERSUS THE REPUBLIC 1UU

JUDGMENT

27191201 8 & 281912918 KITUSL). According to the scanty available record Karoli Mbaha, the appellant was on 5/10/2000 convicted and sentenced for rape contrary to section 130 (2) (a) and 131 (1) of the Penal Code, CAP 16. He immediately expressed his intention to appeal and applied for copies of judgment and proceedings to enable him pursue that intended appeal, but he was informed that the casefile had gone missing. An affidavit of one Emmanuel Michael Teyani Acting Registry Officer In charge of Criminal section authenticatEd by Hon. Fovo, Resident Magistrate Incharge Dodoma, confirms the appellant's statement. 1 / So the appellant has raised six grounds to challenge a decision to which we do not have access. For those reasons there is no point of reproducing or referring to the grounds of appeal given the fact that even the copy of the charge sheet is not there for the court's verification. When this appeal was called for hearing the appellant appeared in person whereas the respondent Republic was represented by Ms Foebe Magiri learned State Attorney. I required the learned State Attorney to submit on the legal position in circumstances like this but she was unaware of any case law. The learned State Attorney was, however candid to invite the court to consider the length of the period the appellant has been in prison, submitting that he has served 18 years out of the 30. On his part the appellant simply surrendered himself to the court's discretion to determine his fate. Although an unwelcome situation, loss of court record is not a new phenomenon in that it has happened before and courts, this court as well as the Court of Appeal, have pronounced themselves on the issue. In the case of Steven Dilitilo V. Republic, Criminal Revision No. 8 of 2017, High court, DSM District Registry I had the occasion to observe as follows; "Fortunately this path has been treaded upon previously. In the case of Ham/si Shaban @ Ham/s ('listadhi) Versus The Republic Criminal Appeal No. 250 of 2010 G4 T at Mwanza (unreported), the Court of Appeal's mind was tasked to resolve the issue of missing record or exhibit From those case laws, three alternative solutions are provided in a case ilke the instant. One to reconstruct the record, or; two to order a retrial, or; three to acquit the appellant." The most recent decision of the Court of Appeal on the issue of lost record is in the case of Robert Madololyo V. Republic, Criminal Appeal No. 486 of 2015, CAT at

Tabora (unreported). This decision is a result of a detailed reference to positions in other jurisdictions and cautions against acquitting a culprits before attempting to reconstruct the record. In this case not only that reconstruction of the record is impossible given the circumstances and lapse of time, but the fact that the appellant has served 18 years in jail as submitted by Ms Magiri is a compelling factor to consider. Consequently and for the reasons stated I quash the conviction, set (92M= years and order the appellant's immediate release ise held lawfully for some other cause. Klu S I L P. (JUDGE 28/9/2018 3

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Prepared on 14 October 2026 · Esheria