

TANZANIA / JUDGMENT

20150930 TZHC Dar es Salaam

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1 IN THE HIGH COURT OF TANZANIA AT DAR ES SALAAM . CRIMINAL APPEAL NO. 97 OF 2014
Original Morogoro District Court Criminal Case NO 14 Of 2012 KASIM S / 0 KASSIM @
JUMA APPELLANT V. 'THE REPUBLIC RESPONDENT

JUDGMENT

Date of last Order 15/9/2015 Date of Judgment 30/ 9/ 2015 Shangwa, J. The Appellant Kassim S/0 Kassim @ Juma was • 1 charged in the District Court of Morogoro with the offence known as Unnatural offence C/S 154 (1) (a) of the Penal Code Cap 16 of the Laws R.E 2002. He was convicted and sentenced to 30 years term of , 2 imprisonment. However, he was not satisfied with both conviction and sentence. Hence this appeal. In his petition of appeal, he raised seven grounds of appeal. These grounds are not wholly comprehensible but in their totality they zero down to the effect that the trial Court wrongly convicted him of the offence charged without sufficient evidence to prove that he did so. During the hearing of the appeal, he told this Court that the trial Magistrate erred in convicting him of the offence charged as no witness was called to show that he saw him committing the offence charged. That whereas the complainant told the police that he made .. 3 alarm at the time of the incident, before the trial Court he did not say so. That other reasons for being aggrieved by the trial Court's decision are as contained in his petition of appeal. These other reasons are contained in the first ground of appeal and the second ground of appeal respectively in which the Appellant argues that whereas his name is Kassim S / 0 Kassim, P.W. 1 mentioned that the offender's name is Bandeko and that P.W. 1 contradicted himself by saying that when he was sodomized he felt pain, and .later by saying that he did not feel pain. In reply, the learned State Attorney, Mrs. Mosia Kaima submitted that even if P.W. 1 told the Court that the name of the person who sodomized him is Bandeko 4 and not Kassim S / 0 Kassim, the name was not important as P.W. 1 knew him before the incident as they were neighbours. In support of her submission, the learned State Attorney cited the case of Daniel Nguru & 4 others V.R. Criminal Appeal NO 178 of 2004 (unreported) in which the Court of Appeal of Tanzania held that "the alleged confusion of the names of some Appellants was non-consequential after all what is the name. , The witness knew them and mentioned their popular names and were arrested" The learned State Attorney submitted also that feeling or non-feeling of pain does not change the truth 5 that the Appellant committed the offence charged ap.d that in law, penetration of the victim is not material in such cases. She concluded by saying that she supports conviction and sentence which was imposed on the Appellant in this case as there was evidence to prove beyond

reasonable doubt that he committed the offence charged. The question to be determined by this Court is whether or not there was sufficient evidence before the trial Court to prove beyond reasonable doubt that the Appellant committed the offence charged. In the charge sheet, the prosecution alleged that on 5th January, 2011 at about 18.00 hours at Kiloka area within the District and Region of Morogoro, the Appellant did have unlawful carnal knowledge with one Dickson S/O 6 Moses a boy of 6 1 12 years old against the order of nature. The prosecution called four witnesses to prove its case and the Appellant defended himself on affirmation. He did not call any witness on his behalf. The following is what the prosecution witnesses told the trial Court in their respective testimonies. P.W 1 Dickson Moses told the trial Court that he knew the Appellant whose name is Bandeko and that he lives at Koloka which is his home place and that on the day of the incident, the Appellant went to his home and sodomized him on the mat outside his home. He further told the trial Court that when his young 7 mother's sister came back home, the Appellant run away. P.W. 2 Frace Mahene told the trial Court that the Appellant is his neighbour and that on 5th January, 2012 when he came back home his son (P.W. 1) informed him that Bandeko had carnal knowledge against his order of nature. That thereafter, he went to report the Appellant to the street chairman and ward executive officer and to the Police Station at Kinguruwira from where he was given P.F 3 and thereafter he took his son to Hospital where he was examined by the Doctor who said that his son had been sodomized. 8 P.W. 3 Fasilius Rubinga told the trial Court that he is a Doctor at Nane Nane and that on 5th January, 2012, P.W. 1 was taken to his hospital complaining that he had been sodomized and that upon examining his anus he found that he had bruises, P.W.4 WP. 5484 DC Jone told the trial Court that he was assigned by OCS at Kinguruwira Police Station to investigate this case and that after being assigned to do so he interrogated the Victim's mother and the Victim himself namely P.W.1 and that the said Victim informed him that he was sodomized by one person called Bandeko at his home on a mat and that he questioned another person called Tamasha who said 9 that he saw the Appellant holding his trousers on his knees immediately after the incident. P.W 5 WP 3233 Cpl Upendo read and tendered the Statement of one Tamasha Issa who could not be found and that Statement was received and tendered in evidence as exhibit P2. In this statement, Tamasha Issa said that he saw the Appellant running away from the scene of incident. The following is what the Appellant told the trial Court in his defence. He said that he did not commit the offence charged against him (unnatural offence). That the Doctor who testified in court about P. W. 1 's condition after examining him told lies in Court. 10 As it can be seen, the Appellant's defence does not create any reasonable doubt in the prosecution's case. Acting on the evidence given by five prosecution's witnesses, I find that the Appellant was properly convicted of the offence charged against him. He sodomized a boy aged six and a half years namely P.W.1 Dickson Moses. Although the Appellant mentioned his name to be Bandeko but the person who was identified by the Victim and arrested is none other than the Appellant Kassim s/o Kassim @ Juma. Moreover, the Victim i.e P.W1 knew the Appellant earlier before the date of incident as both of them lived in the same village known as Kiloka within the District and Region of Morogoro. It is common knowledge that 11 a person may bear several names but remain with the same face. Evidence given by the Medical officer namely P.W.3 Fasilius Rubinga is to the effect that when he examined P.W. 1 he saw bruises in his anus which suggests that he was sodomized. In brief, I agree with the learned

State Attorney that the prosecution proved the case against the _ Appellant beyond reasonable doubt. Therefore, I dismiss this appeal against conviction and sentence. 12 Delivered in open Court this 30 th day of September 2015 in the presence of the Appellant and Mrs. Neema Mbwana, State Attorney.

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Prepared on 14 October 2026 · Esheria