

TANZANIA / JUDGMENT

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IN THE COURT OF APPEAL OF TANZANIA AT IRINGA CRIMINAL APPEAL NO. 216 OF 2010
CORAM: KILEO, J.A., MJASIRI, J.A. And MUSSA, J.A. MANENO
MPOGOLE APPELLANT VERSUS THE
REPUBLIC RESPONDENT (Appeal from the decision of
the High Court of Tanzania at Iringa} (Werema, J.) dated 18th day of May, 2007 in DC. Criminal
Appeal No. 12 of 2007 JUDGMENT OF THE COURT 10th & 11 th December, 2012 MJASIRI, J.A: In
the District Court of Iringa, the appellant Maneno Mpogole was charged with the offence of rape
contrary to section 130(1)(2) (e) and 131(1) of the Penal Code cap. 16, R.E. 2002. He was convicted
on his own plea of guilty and was sentenced to life imprisonment. Being aggrieved by the
decision of the District Court, he appealed against both conviction and sentence. His appeal to
the High Court was summarily rejected hence this second appeal to this Court. 1 t At the hearing
of the appeal the appellant appeared in person and was unrepresented and the respondent
Republic was represented by Mr. Adolf Maganda learned State Attorney. CJ The appellant has
preferred six grounds of appeal. His complaints can be narrowed down to two main issues:- !.
Whether or not the appellant's plea in the trial court was unequivocal.

2. Whether or not the sentence of life imprisonment meted out to the appellant was illegal.
The appellant being unrepresented, requested the court to adopt his memorandum of
appeal. The background to this case is as follows. It was the prosecution's case that on the
15th day of April 2000 at about 18.00 hours at Mazombe Village within Iringa Region, the
appellant did rape one Selina d/o of Maduga who was 10 years of age. The appellant bought
the victim some pears and lured her to follow him to his house so that he could give her 2
money. She agreed to follow him. While on the way the appellant dragged her into the bush,
threatened her with a knife and raped her. r\ In relation to ground No. 1 on the summary
rejection of appeal, Mr. Maganda readily conceded to the appeal. He submitted that the
judge acted on section 28(1) of the Magistrates' Court Act Cap 11 R.E 2002. Mr. Mganda
contended that the judge relied on a wrong provision of the law as Section 28(1) applies to
appeals originating from primary courts. We on our part, entirely agree with the
submissions made by the learned State Attorney. Indeed section 28(1) of the Magistrate's
Court Act applies only to appeals originating from primary courts. The relevant provision is
section 364 (1) of the Criminal Procedure Act, which provides as fol lows:- "364 (1) On
receiving the petition and copy required by section 362, the High Court shall peruse them

and (a)..... . (b)..... . 3 (c) if the appeal is against conviction and sentence the court considers that the evidence before the lower court leaves no reasonable doubt as to the accused's guilt and that the appeal is frivolous or without substance and that there is no material in the Judgment for which the sentence ought to be reduced, the court may forthwith summarily reject the appeal by an order certifying that upon perusing the record, the court is satisfied that the appeal has been lodged without any sufficient ground of complaint" The law is settled on summary rejection of appeal. In Iddi Kondo

- v. Republic [2004] TLR 362, the Court underscored the following principles when considering summary rejection under section 364 (1) of the Criminal Procedure Act. "1. Summary dismissal is an exception to the general principles of criminal law and criminal jurisprudence and 4 therefore/ the powers have to be exercised sparingly and with great circumspection.
2. The section does not require reasons to be given when dismissing an appeal summarily. However/ it is highly desirable to do so.
3. It is imperative that before invoking the powers of summary dismissal a judge or magistrate should read thoroughly the record of appeal and the memorandum of appeal and should indicate that he or/she has done so in the order summarily dismissing the appeal.
4. An appeal may only be summarily dismissed if the grounds are that the conviction is against the weight of the evidence or that the sentence is excessive.
5. Where important and complicated questions of fact and/or law are involved or where the sentence is severe the court should not summarily dismiss an appeal but should hear it
6. Where there is a ground of appeal, which does not challenge the weight of the evidence or allege that the 5 sentence is excessive, the court should not summarily dismiss the appeal but should hear it even if the ground appears to have little merit See also the case of luma Hamidu v. Republic Criminal Appeal No. 67 of 2001 CAT (unreported). It is evident from the record that the principles laid down in Idd Kondo (supra) were not followed. We are of the considered view that it is prudent to scrutinize the record before rejecting an appeal summarily, more so in cases of severe sentences such as life imprisonment. In rejecting the appeal summarily the High Court judge simply minuted as under:- "This is a request for admission of the appeal. It is summarily rejected under section 28(1) of the Magistrates Court Act. The appellant made unequivocal plea of guilty at the lower court. Following Alfani Mlaponi and Another v. R 1990 6 TLR 104 and section 360 of the Criminal Procedure Act I summarily reject the admission of the appeal" The learned judge did not make a reference to the complaint about the illegality of the sentence. In Issa Said Kambukeni v. Republic, Criminal Appeal No. 147 of 2002, CAT (unreported) the court stated thus:- 11The order of summary rejection does not give assurance that he read the evidence which was given at the trial and consciously considered that such evidence left no reasonable doubt as to the appellant's gw"lt and hence lacked substance or that there was no material in the trial court Judgment that would Justify reduction of the sentence imposed on the appellant.

Furthermore, there was no certification by the learned Judge that he was satisfied that the appeal has been lodged without any sufficient ground of complaint'. 7 For the reasons given hereabove, we are of the considered view that it was improper for the learned judge to reject the appeal summarily. We do not think that in the circumstances of this case, it is proper for this court as a second appellate court to step into the shoes of the High Court as the appellant wished us to do by invoking revisional jurisdiction under section 4(2) of the Appellate Jurisdiction Act 1979 as amended. We therefore thereby quash the order of the High Court summarily dismissing the appeal. It is ordered that the record be remitted to the High Court with direction to hear the appeal on merit with immediate effect, taking into consideration that the appellant has been in custody since 2000. DATED at IRINGA this 10th day of December, 2012. E. A. KILEO JUSTICE OF APPEAL S. MJASIRI JUSTICE OF APPEAL 8 K. MUSSA JUSTICE OF APPEAL . DEPU COURT OF 9

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