

TANZANIA / JUDGMENT

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IN THE HIGH OF UNITED REPUBLIC OF TANZANIA TABORA SUB REGISTRY AT TABORA DC
CRIMINAL APPEAL No. 26220 OF 2024 (From the decision of the District Court of Urambo in
Criminal Case No. 50 of2022) MATHIAS S/O SIMON @ MASANJA..... APPELLANT
VERSUS REPUBLIC..... RESPONDENT

JUDGEMENT

Last order: 4/11/2024 Judgement date: 05/12/2024 MANGO, J The Appellant was charged with the offence of rape contrary to section 130(l)(2)(a) and 131(1) of the Penal Code, [Cap 16 R.E 2022]. It was alleged that on 22nd day of August at the evening hours at Azimio village within Urambo District in Tabora Region, the Appellant raped a woman aged 50 years old. For purposes of protecting the victim's dignity, her name will not be revealed in this judgment, instead, the initials NM will be used to refer to the victim. After full trial, the Appellant was convicted and sentenced accordingly. The Appellant was dissatisfied with the decision and he appealed to this Court armed with four grounds of appeal which reads as follows: -

1. That the learned trial Magistrate erred in law and fact to convict the appellant basing on unfavorable conditions for proper identification
2. That the learned trial Magistrate erred in law and fact to convict and sentence the appellant relying on weak evidence adduced by the Prosecution
3. That the learned Trial Magistrate erred in law and fact by denying the right of defence to the Appellant
4. That the case against the Appellant was not proved beyond reasonable doubt On 4th November 2024 when the appeal was called on for hearing, the Appellant appeared in person while the Respondent was represented by Ms. Wivina Rwebangira learned State Attorney. Being a lay person, the Appellant merely prayed to adopt his grounds of appeal for consideration by the Court, the prayer which was granted. The learned State Attorney did not contest the appeal. She conceded that the prosecution has not proved the case beyond reasonable doubt. As to what made her concede that prosecution did not prove the case against the Appellant beyond reasonable doubt, the learned State Attorney pointed out weaknesses in identification of the Appellant. She submitted that, evidence adduced by the prosecution establishes that identification of the Appellant in this matter was not reliable.

She referred the Court to the testimony of the victim of the offence in which she stated that she was raped by a person that she does know. She only identified the person by his appearance. She argued that, despite such explanations by the victim no Identification parade was conducted to ensure that the accused, the Appellant before this Court, is indeed the person who raped her. The victim identified him before the Court. The learned State Attorney argued that, dock identification cannot be relied upon where the accused was identified by physical appearance and no identification parade was conducted. To cement her arguments, she referred the Court to the case of Anness Allan vs DPP Criminal Appeal No. 173 of 2007 in which the Court of Appeal stated that dock identification is not reliable. I have considered grounds of appeal adopted by the Appellant, submission by the learned State Attorney and Court record. According to the grounds of appeal, the Appellant challenges the Trial Court for convicting him based on weak prosecution evidence. He specifically mentioned unreliable identification that was the basis of his conviction. The learned state Attorney conceded that, identification of the Appellant in this matter was not done in the required standards. I agree with the learned State Attorney that identification in this matter was very poor. I hold so because, the victim PW1 stated that she was raped by a person that she does not know. According to her, she could identify the culprit by his physical appearance as she conversed with him when he asked for a way to Mgembya area. Despite such explanations, no identification parade was conducted to clear possibility of mistaken identity. The Appellant was only identified by the victim during Court proceedings. Such poor identification is also evident from the testimony of PW2 Haruna Bundala who responded immediately after the victim screamed for help. This very important witness, stated that, he tried to search for the culprit in vain. He stated further that, the Appellant was arrested next day at Tulieni area which is almost 2 kilometers from the place where the incident took place. PW4, H 2175 D/C Shija alleged that, the victim identified the Appellant when he was arrested by the villagers but his testimony contradicts that of the victim who 3 stated clearly that she identified the Appellant at the Court. It is not clear how and on what reasons was the Appellant arrested. It is well established that dock identification is not reliable. In the case of Francis Majaliwa Deus and 2 others vs The Republic, Criminal Appeal No. 139 of 2005 which cited with approval the case of Gabriel Kamau Njoroge vs Republic, [1982-88] 1 KAR 1134, 1136 the Court of Appeal observed that: "Dock identification is worthless, the court should not rely on a dock identification) unless this has been preceded by a properly conducted identification parade. A witness should be asked to give description of the accused and the prosecution should then arrange a fair identification parade" In the same vein, I find the prosecution case which was grounded on weak identification of the culprit to be incapable of proving the case against the Appellant beyond reasonable doubts. Consequently, his conviction is quashed and his sentence is set aside. The Appellant should be released from prison custody unless held for other lawful reasons. Dated at Tabora this 5th day of December 2024 Z.D.MANGO JUDGE

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Prepared on 13 October 2026 · Esheria