

TANZANIA / JUDGMENT

20100503 TZCA Mwanza

COURT
TZCADECIDED
3 May 2010

Source: media.tanzlii.org · Research copy typeset by Esheria. Not court-issued or certified.

IN THE COURT OF APPEAL OF TANZANIA ATMWANZA (CORAM: MSOFFE, J.A., MBAROUK, J.A.
And BWANA, J.A.) CRIMINAL APPEAL NO. 119 OF 2005 lvi NIKO

GETER_A APPELLANT VERSUS THE

REPUBLIC RESPONDENT (Appeal from the Revisional
Order of the High Court of Tanzania at Mwanza (Mchome, 3.) dated the 22 nd day of November,
2005 in HC Criminal Revision No. 18 of 2003 JUDGMENT OF THE COURT 30 April & 4 May, 2010
MSOFFE, J.A.: On 5/11/2002 the District Court of Tarime (Kesase, DM) convicted the appellant of
rape contrary to Sections 130(1)(2)(e) and 131(1) of the Penal Code (hereinafter the Code) upon a
plea of guilty to the offence charged. It accordingly sentenced him to a term of imprisonment for
thirty years and corporal punishment of twelve strokes of the cane. It also made an order for
compensation of shs. 100,000/= to Rhobi Magwe, the victim of the rape. The appellant did not
appeal to the High Court. In exercise of its revisional jurisdiction on 22/11/2004 the High Court
(Mchome, 3.) invoked the provisions of Section 131(3) of the Penal Code, as amended by the
Sexual Offences Special Provisions Act No. 4 of 1998, and varied the sentence to one of life
imprisonment. Aggrieved, the appellant is now appealing. At the hearing of the appeal he
appeared in person. The respondent Republic had the services of Mr. Steven Makwega, learned
State Attorney. The appellant preferred a two-ground memorandum of appeal. The grounds read
as follows:- That, the honourable judge had erred in law to satisfy himself that the plea entered
by the appellant was unequivocal and he could safely convict on its basis. That, the honourable
judge had erred himself in law for failure to observe the question of intoxication arising out from
the appellant's cautioned statement (Exh. Pd) and in thus adjudicate the matter before exercising
sentencing principles.

- -

- I 4 Surprisingly however, in his brief oral submission before us, the appellant did not say anything on the above grounds. Instead, he reiterated that it was true that on 24/10/2002 at about 13.00 hours he raped Rhobi Magwe, a girl of eight years of age. His concern at this point in time, he went on to say, is the sentence meted by the High Court. He urged us to revisit it and hold that it was too severe. In his brief but focused submission, Mr. Makwega contended that the plea was unequivocal. The appellant knew the nature of the offence, he did not deny it, the particulars of the offence were very clear, and he did not deny the facts presented before the conviction. Indeed, he went on to submit, the facts as presented

proved the necessary ingredient of the offence under Section 130(4)(a) of the Code thus:-

- (a) penetration however slight is sufficient to constitute the sexual intercourse necessary to the offence. On the alleged intoxication, Mr. Makwega was of the view that the fact that the appellant gave the victim a sum of shs. 2001= after the sexual act was a clear indication that he was not all that intoxicated 3 -I as to be unable to appreciate what was going on around him. At any rate, he went on to submit, under Section 14(1) of the Code intoxication does not constitute a defence to any criminal charge. At this juncture we think it is pertinent or desirable to reproduce the appellant's plea in the trial District Court. The plea was recorded in the following words:- It is true I raped Rhobi Magwe. Thereafter, the Public Prosecutor narrated the facts which were essentially to the effect that on the material day and time the appellant met the complainant, pulled her to a nearby forest, took the piece of khanga she was putting on and spread it on the ground, felled her to the khanga on the ground, and then raped her. In the course of the sexual intercourse the complainant felt pains. As the appellant left the complainant, he gave her a sum of shs. 2001= in order for her not to disclose the sexual encounter to anybody. After the above facts had been given, the appellant is recorded to have said:- I admit the facts which are true and I am the one who raped that girl of 8 years. Whereupon the trial District Court proceeded to enter a plea of guilty and convicted the appellant accordingly. Surely, on the above facts the offence indicated in the charge sheet had been made out. The facts, as narrated by the public prosecutor, proved that the appellant had carnal knowledge of his victim. In similar vein, on the basis of the record before us, the appellant's plea of guilty was unequivocal. As opined and held by the High Court, the sentence of life imprisonment is legal. Section 131(3) of the Code provides:-
- (3) Notwithstanding the preceding provisions of this section whoever commits an offence of rape to a girl under the age of ten years shall on conviction be sentenced to five imprisonment. In this case, there is no dispute that Rhobi Magwe, the victim of the rape, was eight years of age on the date of the incident. As such, 5
- I find there is nothing to fault the High Court in varying the sentence of thirty years imprisonment to one of life imprisonment. In the light of the foregoing, we are in entire agreement with Mr. Makwega in his respectful submission before us and we will not say or add anything more. For the above reasons, we dismiss the appeal. DATED at MWANZA this 3d day of May, 2010. J. H. MSOFFE JUSTICE OF APPEAL M. S. MBAROUK JUSTICE OF APPEAL S. J. BWANA JUSTICE OF APPEAL I certify that this is a true copy of the original. (3. U DEPUTY REGISTRAR 6

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE [https://media.tanzlii.org/media/judgment/327484/
source_file/9fadbb2ba0db1bfa/20100503_TZCA_Mwanza.pdf](https://media.tanzlii.org/media/judgment/327484/source_file/9fadbb2ba0db1bfa/20100503_TZCA_Mwanza.pdf)

CASE PAGE <https://chat.esheria.ai/case-law/tanzania/niko-getera-v-the-republic-rape-tzca-2010>

Prepared on 14 October 2026 · Esheria