

TANZANIA / JUDGMENT

NA TZHC Dr es Salaam

COURT
TZHCDECIDED
1 January 1985

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IN THE HIGH COURT OF TANZANIA AT DAR ES SALAAM CRIMINAL APPEAL NO. 108 OF 2002
(Originating from Temeke District Court Criminal Case No. 816 of 2000) SALUM
BAKARI APPELLANT VERSUS REPUBLIC RESPONDENT•

JUDGMENT

ORIYO, J.: The appellant, Salum Bakari, was convicted of rape of one Mariam Japhari aged 14 years; pursuant to the provisions of SECTION 130 (2) (a) and 131 of the " Penal Code as amended by the Special Offence Special Provisions Act 4 of 1998. He was sentenced to 30 years Imprisonment, 12 strokes and a compensation of shs. 2,000,000/= to the victim. Aggrieved he appealed against both the conviction and sentence and he filed four grounds of appeal. I will, for obvious reasons, start with ground 2 in that the trial Court admittEd evidence of PF 3 as Exhibit "P 1" without summoning the author or informing the appellant of his right to require the author 1 to be summoned for cross examination; contrary to SECTION 240 (3) of the Criminal Procedure Act, 1985. Going by the record, PF 3, was tendered by the victim, PW 1, and was admitted in evidence as Exhibit P I. The accused did not object to its admission. Does it me.an that the appellant compromised his legal rights under Section 240

- (3) by stating that he had no objection to its being admitted in evidence? Not at all. The responsibility of informing the accused of his rights is placed on the trial court. In this case the trial court failed to inform the appellant of his right. In fact it is uncertain if the contents of the PF 3 were read out in court for the appellant to understand them because the record is silent on that and the incriminating nature of the contents unknown to the appellant. SECTION 240 (3) of the Criminal Procedure Act 1985 provides in part as follows:- " The court shall inform the accused of his right to require the person who made the report to be summoned in accordance with the provisions of this subsection" (emphasis provided) It was mandatory for the court to inform the appellant of his right; whether he would have exercised it or not; that is immaterial. 2 . . On the other hand, in my view, the appellant may not be as innocent as he tried to portray himself. According to the testimonies of PW 1, PW 2, PW 3 and PW 4; and the appel lant's behaviour at the scene; there is great li kel ihood that he was not an innocent man; had it not been for the omission committed by the trial Court. I hope trial courts will ensure compliance in future as the offence is rampant despite the stiff sentence provided by law. The omission is fatal to the proceedings; they are a nullity. On the

foregoing, the appeal is allowed; the proceedings and conviction, sentence and orders are hereby quashed and set aside. The appellant is to be immediately released unless held for some other lawful cause. (K.K. ORIYO) JUDGE 3

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