

TANZANIA / JUDGMENT

Shaban Mohamed Msati Judgement

COURT
TANZLIIDECIDED
15 October 2024

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

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA (MOROGORO SUB-REGISTRY)
AT MOROGORO CRIMINAL APPEAL NO. 25384 OF 2023 (Arising from the decision of District
Court of Morogoro in Criminal Case No.4455 of 2024 dated 15th October 2024) SHABAN
MOHAMED MSATI..... APPELLANT VERSUS
REPUBLIC..... RESPONDENT

JUDGEMENT

18/03/2025 & 27/03/2025 KINYAKA, J.: Before the District Court of Morogoro at Morogoro hereinafter the "trial court", the appellant was charged with the offence of rape contrary to sections 130(1)(2)(e) and 131(1) of the Penal Code, Cap. 16 R.E. 2022 hereinafter the "Penal Code". It was alleged that on diverse dates between the year 2022 and September 2023 at Ngerengere area, Chamwino within Morogoro District in Morogoro Region, the appellant had carnal knowledge of a twelve years old girl who testified as PW2. The appellant denied the allegations which prompted the prosecution to present four witnesses to support their case against him. 1 The prosecution evidence at the trial revealed that the victim was living with her mother who was married to the appellant after the demise of the victim's father. They were also living together with the appellant's son, Dhakri Shaban Msati who was sleeping with the victim at the sitting room. As to what befell her, PW2 testified that on 2022 she woke up one night and found the appellant on the place she used to sleep. That the appellant covered her mouth, warning her to stay silent and not to tell anyone. He also threatened to kill the victim's mother if she did. That the appellant proceeded to undress her and inserted his manhood into her private parts. She added that thereafter, it became a continuous habit of the appellant to rape her even when her mother was around, and the last day she was raped by the appellant was on 18/09/2023 before she shifted to Dar es Salaam to study pre-form one studies at Kington Secondary School. The records reveal that the victim disclosed the crime only after being interrogated by the police and speaking privately with her grandmother (PW1, Subira Hossen) at Ngerengere Police Station, following her grandmother's complaint about her alleged kidnap to Dar es Salaam to abort the pregnancy. The victim denied to be pregnant and as such they were given PF3 to go the hospital for further examination. At Ngerengere Health 2 Centre, PW4, Dr. Clement Faustine Mkinga, examined the victim and found the victim with no hymen. Neither was she found with HIV, STDs, or pregnancy. PW4 subsequently filled the PF3, which was admitted in court as exhibit "PE1". PW3, Maimuna Abdallah Lupesa, the victim's mother, confirmed that after speaking privately

with her grandmother at the police station, the victim disclosed being raped by the appellant during her absence. She testified further that the victim was not kidnapped and taken to Dar es Salaam but she went to school. She further clarified that she was the one who had been pregnant and lost the pregnancy, not the victim. In his defence, the appellant distanced himself from the accusation. He testified that the case against him was fabricated by PW1, the biological mother of the victim's biological father because of the family dispute they had. Other witnesses for the defence were DW2, Pulkeria Emmanuel Paulo, a nurse who confirmed PW3's miscarriage and DW3, Dhakri Shaban Msati, who testified on the character of PW2 stating that PW2 had a bad character, associating her with sexual relationships with different boys. In its evaluation of evidence before it, the trial court was convinced that the prosecution had made out a case against the appellant. The appellant was thus convicted as charged and sentenced to serve thirty years imprisonment in jail. Aggrieved by both the convictions and sentences, the appellant filed his petition of appeal in which he raised a total of eight grounds as reproduced hereunder:

1. That the trial court failed to correctly and properly address itself on section 127(2) of the Evidence Act governing the competency of child of tender age as;
 - a) PW2's promises were not compatible with, nor support the magistrate conclusion of the examining magistrate was of view that they did not know the nature or rather essence of telling the truth (see page 12 of the proceedings).
2. That the learned trial magistrate erred in law and facts to convict and sentence the appellant based to the hearsay evidence of PW1 and PW3 which contradicts and leaves doubts on the prosecution case;
3. That the learned trial magistrate erred in law and upon fact to convict and sentence the appellant based on the evidence of PW4 (Medical doctor) which did not suggest that the victim's hymen was removed through playing sex but his opinion suggested that it cannot be removed even by other way like sports or hard works i.e. his evidence did not link the appellant with the offence;
4. That the learned trial magistrate erred in law to convict the appellant based on the case which was not investigated at all by police rather than at the Police station, Police officer gave chance to the victim and her grandmother to talk privately as per PW3's evidence at page 12 of the proceedings hence made possibility of this case being fabricated;
5. That the learned trial magistrate erred in law and in fact when failed to do critical analysis and evaluation of the defense evidence which suggested that there was misunderstanding which existed between PW1(victim's grandmother) and appellant over the victim's deceased father property whereby PW1 was required to provide sum funds for the victim on the tune of TZs. 200, 000/= every month and stopped led to a framed case;

6. That the learned trial magistrate erred in law when violated section 312(1) of the CPA Cap. 20 R.E. 2022 after she failed to correctly and properly address herself on the above section when conclude that prosecution proved the case beyond reasonable doubt before analyzing the defense evidence; 5
7. That the learned trial magistrate erred in law and fact to convict and sentence the appellant based on the charge sheet which did not give clear particulars in respect of the date(s) of the alleged incident so as to enable the appellant prepare his defense hence resulted in the miscarriage of justice; and
8. That the learned trial magistrate erred in law and fact to convict and sentence the appellant in case that was not proved beyond reasonable doubt. At the hearing of the appeal, the appellant appeared in person fending for himself whereas the respondent was represented by Mr. Shaban Kabelwa, learned State Attorney. Upon being invited to argue his appeal, the appellant informed the Court to let the learned state attorney submit first reserving his right to make a rejoinder submission. He however urged the Court to find his grounds of appeal merited as they are based on law. On that regard, he prayed for the Court to allow the appeal so that he be set free. Mr. Kabelwa opposed the appeal, he supported the appellant's conviction and sentence. 6 Responding in respect of the first ground, the learned state counsel referred the Court to page 11 through to 12 of the trial court proceedings and contended that section 127(2) of the Evidence Act, Cap 6, R.E. 2022, herein referred as "the Evidence Act" was complied with by the trial court. In support of his position, he cited the decision on the case of Godfrey Wilson
- v. R [2019] TZCA 109 on page 13 through to 15, where the Court of Appeal clarified the manner of taking the evidence of a child of tender age. He highlighted that the trial court recorded what was promised by PW2 in compliance with what the Court of Appeal directed in the case of John Mkorongo James v. Republic, Criminal Appeal No. 498 of 2020 [2022] TZCA 111 (11 March 2022). It was his further contention that even if the Court finds that the evidence of PW2 was taken in contravention of the requirement of the law, the anomaly can be cured by section 127(6) of the Evidence Act. On that basis, Mr. Kabelwa urged this Court to dismiss the first ground of appeal for lack of merit. As for the complaint on the second ground, the learned state attorney submitted that the evidence of PW1 and PW3 was not hearsay or contradictory. Expounding further, Mr. Kabelwa contended that testimonies 7 of PW1 and PW3 was based on what they did and witnessed. That said, he prayed for the dismissal of the second ground of appeal. In relation to the third ground of appeal, Mr. Kabelwa submitted that the best evidence in sexual offences cases is from the victim and that the evidence of a medical officer only proves penetration. He cited the case of Selemani Makumba v. R [2006] TLR 149, to support his assertions. As for the fourth ground, Mr. Kabelwa relied on the evidence of the prosecution witnesses to wit, PW1's testimony on page 10; PW2's testimony on page 13; PW3's testimony on page 16; PW4's testimony on page 19]; and DW1's evidence on page 27, 28 through to 29, to contend that the case was investigated according to the nature of the offence. He prayed for dismissal of the fourth ground. On the fifth and sixth

grounds which he opted to argue jointly, Mr. Kabelwa submitted that the trial court's omission to consider the dispute between PW1 and the appellant in its evaluation of the defence evidence does not cast doubt on the prosecution case. He argued that the trial court properly evaluated the evidence as reflected on page 8 and 9 of the judgement and found the victim (PW2) both a reliable witness and that what she testified 8 was the truth. It was his further averment that the character of PW2 as testified by DW3 does not negate that the victim was raped by her father and that the trial court had ample time to assess the demeanor and credibility of the witnesses. He cited the case of Iddy Salum @ Fredy v. R [2023] TZCA 245 to insist on the duty of this Court to reevaluate the evidence on record if there was no proper evaluation of evidence. Responding to the seventh ground, the learned state attorney submitted that the particulars of the charge were correct. He elaborated that the incidents occurred in various dates ranging from 2022 to September 2023. To support his stance, he cited the case of John Leon Kimario v. R [2024] TZCA 404 and intimated that the prosecution proved the incidents within the range described in the charge and that the particulars in the charge were clear and understandable to the appellant. As for the eighth ground, Mr. Kabelwa submitted that the ingredients of the offence of rape as provided for under Section 130(1) and (2) (e) of the Penal Code were established by the prosecution witnesses. He elaborated that the age of the victim was proven by PW3 on page 15 as held in the case of Issaya Renatus v. R [2016] TZCA 228. It was also his view that the second ingredient on penetration was proven by PW2 on page 9 13; and PW4 on page 19 citing the case of Selemani Makumba v. R [2006] TLR 149 to cement his stance. According to him, penetration was proven by PW2 on page 13 following her testimony that it was the appellant who raped her. As such, he supported the trial court's findings and urged the Court to dismiss the eighth ground of appeal. Generally, it was Mr. Kabelwa's submission that the appellant's appeal is of no basis and ought to be dismissed. He further prayed for the Court to uphold the trial court's conviction and sentence. The appellant's rejoinder submission was brief. Maintaining his claim under the first ground, he urged the Court to be inspired by the decision in the case of Hussein Mustafa v. Republic, Criminal Appeal No. 650 of 2023

[2024] TZCA 483 (21 June 2024) and set him free so that he can join his family. In respect of the second ground, the appellant insisted that there were contradictions in the evidence of PW1 and PW3. He highlighted that on page 9 of the proceedings, PW1 testified that she received the information on the incidence on 25/10/2023 but reported the same on 30/10/2023. He stated that the testimony is inconsistent with that of PW3 who testified that she was summoned to the police on 26/10/2023 and went to police on 10 27/10/2023 and was asked about matters that according to PW1, had yet to be reported to the police. As for the third ground, the appellant contended that PW4 evidence did not prove that it was him who was responsible for the removal of the victim's hymen. Rejoining on the fourth ground, the appellant pressed that there was no sufficient investigation conducted on the case. He complained that PW1 testified that she was given time to privately speak to the victim even after the victim denied to have been raped by the appellant, the fact that was also confirmed by DW3. Basing on his submission, the appellant prayed for his grounds of

appeal to be considered in order for justice to be done to him. The closure of the parties' submissions entitles this Court to determine the grounds of appeal and arrive at decision on whether the present appeal is merited. In the course of determining the appeal, I will consolidate the fifth, sixth and eighth grounds of appeal and determine the rest of the grounds separately. I will determine the first, second, third, fourth, followed by the seventh then finally, the fifth, sixth and eighth grounds as consolidated. 11 The first ground is an attack on the trial court's contravention of section 127(2) of the Evidence Act. The appellant's complaint is that PW2's promise was incompatible with the trial court's conclusion that PW2 did not know the nature or essence of telling the truth. The complained part of the proceedings is found on page 11 through to 12 of the proceedings. The excerpt read as follows: "PW2 Name: YMJ, 12 years Ha, Student, Ngerengere, Muslim. Q. Do you go to Mosque? A. Yes. Q. What are you taught at the Mosque? Ans. Praying. Taw heed Q. What is telling the truth? A. Is telling what is correct. Q. Do you know the meaning of oath? Ans. No. Court: The witness is of a tender age. She does not know the nature of oath and the duty to tell the truth. The court has asked her to promise to tell the truth and not any lies and she says: - Witness: "I promise to tell the truth to the court and not to tell any lies." Court: Section 127(2) of the Evidence Act [Cap. 6 R.E. 2022] is complied with." 12 It is clear to me from the above excerpt that PW2 did not know the meaning of oath but knew the meaning of telling the truth. When she was probed by the trial magistrate about the meaning of telling the truth, PW2 responded that it means telling what is correct. For that reason, I agree with the appellant that the trial magistrate's conclusion that PW2 did not know the duty to tell the truth was incorrect. However, the promise made by PW2 to tell the truth and not lies was sufficient for the purpose of compliance with section 127(2) of the Evidence Act. It follows that despite an error in the conclusion of the trial magistrate, PW2's testimony was received upon her promise to tell the truth and not lies, sufficient for compliance with section 127(2) of the Evidence Act. I therefore dismiss the first ground of appeal. The second ground is the appellant's complaint that the evidence of PW1 and PW3 had contradictions and based on hearsay. In considering this ground of appeal, I reviewed the evidence on record and found that the testimony of PW1 on page 9 through to 10 of the proceedings and that of PW3 on page 16 of the proceedings reveal that PW3 was summoned by the Police on 26/10/2023 and went there on 27/10/2023 before PW1's reporting the crime at the Police on 30/10/2023. Although the 13 dates demonstrate variance, the same does not impact the prosecution case as the evidence was in respect of the series of events that had occurred during reporting and investigation of the crime. [See: Mohamed Said Matula v. Republic [1995] TLR 3 where it was held that normal discrepancies do not corrode the credibility of a party's case)]. However, I am in entire agreement with the appellant that the evidence of PW1 and PW3 relating to the criminal charge, was based on hearsay. PW1 testified as reflected on page 10 of the proceedings that the Police told her to sit with the victim in order to know the truth but she was informed by the police that the police discovered that she was raped by her step father. Further, PW3's testimony on page 16 was very clear that she did not know what PW1 spoke with PW2 when they were allowed to speak privately at the police station. She informed

the trial court that the victim stated that she was raped when she was interrogated. She did not disclose if she was present when the victim was interrogated or someone else informed her. The testimonies of PW1 and PW3 reveal that they both heard what the victim informed the police or the police discovered that the victim was raped by her step father, the appellant. No police officer or the one police who discovered 14 about the rape or who was informed by the victim about the rape, adduced evidence at the trial to corroborate the testimonies of PW1 and PW3. The testimony of PW2, the victim does not reveal if she informed the police that she was raped by her step father. On page 13 of the proceedings, PW2 stated: "On 12/11/2023, I shifted from home of my aunt and I went to the police. I was interrogated if I was raped I said no. I was taken to the hospital and I was examined and they discovered that I was raped. At first, I denied to be raped because I feared that my father will kill my mother....." Deducing from the above testimony, it is clear to me that when interrogated by the Police, PW2 denied to be raped. She did not state the person to whom she revealed the crime or that it is her step father who raped her. The testimony of PW1 that the police officer informed her that the latter discovered the victim to have been raped her step father, casts doubt on the alleged PW2's statement that she was raped by her step father to the police. From the above observations, I find the second ground of appeal merited and I allow the same. 15 I now turn to determine the third ground relating to appellant's complaint that the evidence of PW4 was erroneously relied by the trial court to enter conviction despite the fact that it did not link him with the offence of rape. In sexual offence cases like the present one, the evidence of a medical personnel is to establish, upon his examination, that there was penetration. It does not normally establish who penetrated the victim. It was not expected of PW4 to establish the person who penetrated PW2. It is clear from the record that the evidence to establish that the victim was penetrated by the appellant came from the victim herself. [See: Selemani Makumba v. Republic [2006] T.L.R. 379]. The doctor's evidence corroborated the victim's evidence that, she was penetrated. As the ingredient of penetration is key in rape cases, and considering PW4's testimony that the victim had no hymen, I find it correct for the trial court to hold that the victim was penetrated linking PW4's testimony and Exhibit PE1 with that of the victim, PW2. I dismiss the third ground of appeal for lack of merit. The appellant's dissatisfaction in the fourth ground is that the case subject of the criminal proceedings at the trial court was not investigated at all. 16 I have noted from the proceedings of the trial court on page 9 through to 10 on the testimony of PW1, page 13 on the testimony of PW2, and page 16 on the testimony of PW3, that the matter passed through the hands of police officers at Ngerengere Police Station before it found its way to the trial court. The proceedings reveal that PW1 reported the alleged disappearance of the victim on allegation of pregnancy, PW2 was summoned at the police where interrogation was conducted, and PW2 was interrogated by the police. Based on the above state of affairs, I do not find merit on the appellant's complaint that the case was not investigated at all. I hold that for the purpose of the offence of Rape that the appellant was charged with, the proceedings at the police station including the procurement of Medical Examination Report (PF3) admitted in evidence as Exhibit PE1, was sufficient to proof that

investigation was conducted. I dismiss the fourth ground for lack of merit. The complaint in the seventh ground is that the charge sheet did not give clear particulars of the dates of the alleged incident to enable the appellant prepare his defense. The record of the trial court reveal through the charge sheet that the appellant had sexual intercourse with the victim during the period between 17 2022 to September 2023. I have also found that the testimony of PW2 clearly matched the period of the alleged offence from 2022 to September 2023. Further, the testimony of the appellant who testified as DW1 reflected on page 23 through to 31 of the proceedings reveal that he understood the charge and was accorded with an opportunity to defend the same. He also presented DW2 and DW3 as his defense witnesses. I find no merit in the appellant's seventh ground of appeal and I dismiss the same. The appellant's complaint in the fifth, sixth and eighth grounds of appeal is on failure by the trial court to properly evaluate evidence leading to a finding that the prosecution proved the offence beyond reasonable doubt. The issue I am enjoined to determine is whether the trial court correctly analyzed the evidence in arriving at the conclusion that the prosecution proved the offence against the appellant beyond reasonable doubt. The ingredients of the offence of Rape are provided for under sections 130(1)(2)(e) and 131(1) of the Penal Code which include proof of age of the victim, penetration, and that the accused was the one who raped the victim. The provision is amplified in the case of *Wambura Kigingira v. Republic*, Criminal Appeal No. 301 of 2018 [2022] TZCA 283 (13 May 2022) on page 28 where the Court of Appeal held: 18 "In all categories of rape, the basic ingredient for the prosecution to prove is penetration of the female genitals by the male sex organ. When it comes to statutory rape, there is an additional burden of proof of age of the victim in order to ascertain that at the time the offence was committed, she was below 18 years of age" (Emphasis added) At the trial, the age of the victim was proven by her mother, PW3 who testified that the victim was below the age of eighteen years at the time of the alleged offence. [See the case of *Omary Rashid @ Milanzi v. Republic* [2023] TZCA where it was held that that, age of the victim can be proved by the victim herself, mother, father, medical practitioner, relative and where necessary by production of the birth certificate]. On whether penetration was proved, I have considered the evidence of PW2, PW4 and Exhibit PE1 and I am satisfied that the evidence sufficiently established that the victim's vagina was penetrated. In her evidence, PW2 testified that she was raped while PW4 and Exhibit P1 was a proof that the victim had no hymen. In my view based on the above observations the ingredients that the victim was below the age of eighteen years and her vagina was penetrated, was sufficiently proven. 19 As to whether the evidence on record establish that the victim was raped by the appellant, the trial court found the prosecution's evidence convincing and concluded that the appellant was responsible for the penetration of the victim's vagina. However, it is imperative for this Court, being the first appellate court to re- evaluate the evidence adduced at the trial to establish whether the trial court properly evaluated the evidence to arrive at its decision. [See the decision of the Court of Appeal in *Iddy Salum @ Fredy v. R* [2023] TZCA 245]. I have held in respect of the second ground of appeal that the testimonies of PW1 and PW3 regarding the offence the appellant was charged with was

based on hearsay. I also held in respect of the third ground that the evidence of PW4 and Exhibit PE1 established penetration and not the person whose male organ penetrated the vagina of the victim. According to the record, it is the evidence of PW2 that point the appellant as the perpetrator of rape. Under section 127(6) of the Evidence Act, the Court may convict the accused relying only on the evidence of the child of tender age or of a victim of sexual offence, if it is satisfied of the credibility of the evidence notwithstanding that such evidence is not corroborated. On the premises, it is pertinent at this juncture to evaluate the credibility of the evidence of PW2, the victim of sexual offence who was also the child of tender age. In doing so, I have in mind the settled principle that credibility is tested on assessment of the witness demeanor, coherence of the witness's testimony and considering the testimony of the witness in relation to the evidence of other witnesses. [See: Nyakuloga Boniface v. R, Criminal Appeal No. 434 of 2017 Court of Appeal (unreported)]. In her evidence on page 13 of the trial court proceedings, PW2 testified that she was raped by the appellant from 2022 to September 2023. However, she informed the court that when she was interrogated by the police, she denied. In her entire evidence, PW2 did not state the person to whom she revealed she was raped by the appellant. She stated that she denied to be raped by the appellant fearing that he will kill her mother. Having examined and tested the testimony of the victim in relation to the principle enunciated in the case of Nyakuloga Boniphace v. R (supra), I do not find PW2 reliable and her evidence credible. To begin with, PW2 did not disclose the crime to anyone including her mother for almost two years she alleged to have been raped by the appellant. Further, I do not find it normal for PW2 to deny to have been raped when at the police station after she was allowed to speak privately with her grandmother. Further, the evidence of PW2 during cross examination demonstrate doubts as to the credibility of PW2's evidence that she was scared that her mother would be killed by her step father if she discloses the crime. On page 13 through to 14 of the proceedings, PW2 testified: "..... one day you come home and found my young brothers bathing together. You sat with us and said you are at the Gender desk and if any one abuses us, we should report to the police station. You even told us that if anyone gives me a gift or calls me a fiancé, I should report to any elder person apart from the one who give me the gift." The version of the above testimony reveal that the appellant was advising his children, including PW2 to report to report to the gender desk or any elder if anyone attempts to deceive or take advantage of them. In that view, it is doubtful if the delay in PW1's reporting of the crime was occasioned by threats from the appellant that the latter would kill her mother if she discloses the crime to anyone. Again, PW2's evidence was manned by several contradictions that diminished its credibility. On page 12 of the proceedings, PW2 testified that 22 the appellant started to rape her in 2022. However, when she was cross examined, as reflected on page 14 of the proceedings, she stated that the appellant raped her after she completed standard VII exams but not before. The record reveal that the appellant completed her standard VII in 2023 when she went to study pre-form one in 2023. It means that if the appellant raped the victim after she finished her standard VII exams and not before, it means that she was raped in 2023 not from 2022 as she stated in her evidence

in chief. Further, PW2 testified as reflected on page 13 that she was raped by the appellant in 2022 at night but during cross examination on page 14, she stated that in 2022, the appellant was working with SGR on night shifts. Additionally, PW2 testified that the appellant had sexual intercourse with her during the times when her mother was at home and when she was not around. She also testified that the incidents of rape occurred in a sitting room where she was sleeping with her brother though on different beds. However, the testimony of PW3 reveal that she had no knowledge of the crime occurring in her home for two years alleged to have committed by the appellant who was her husband. It is on record that the appellant, PW3 and 23 PW2 was living in a house with only one bedroom occupied by the appellant and PW3, and a sitting room occupied by their children including the victim. For the number of times that the victim alleged to have been raped by the appellant, I find it unlikely for the rape to be committed in the sitting room while the victim's brother was sleeping in the same sitting room and while the victim's mother (PW3) was at home in the other only bedroom in the house. I find the complaint by the appellant on the misunderstanding between him and PW1 to be relevant in the circumstance. PW1 version of the story that made her to report the crime to the police was that the victim was kidnapped and taken to Dar es Salaam by the appellant to abort pregnancy. However, the testimonies of PW2 and PW3 reveal that PW2 went to Dar es Salaam to study pre-form one. It was confirmed by PW3, DW1 and DW2 that it is PW3 who had pregnancy and which she miscarried. The testimonies of PW1 and PW3 on page 10 and 16 of the proceedings, respectively, reveal that the victim was left to speak to her grandmother privately at the police. It was after such conversation that it was known and/or discovered by the police that the victim was raped by her step father. 24 Further, PW1 testified on page 10 through to 11 of the proceedings that she had misunderstanding with PW3 because she wanted to take care of PW2 but PW3 refused. That testimony was corroborated by PW3 in her testimony on page 17 of the proceedings that she did not inform PW1 that PW2 went to Dar es Salaam as she was not communicating with PW1. PW3 stated that PW1 was giving her maintenance for PW2 of TZS 200,000 twice but she then stopped. DW1 testified at large on the misunderstanding between her family and PW1 as reflected on page 23 through to 24 of the proceedings corroborating the testimonies of PW1 and PW3 on the family misunderstanding. DW3, the child of tender age who was twelve years at the time of giving his testimony is the victim's young brother, and a son to PW3 and the appellant. His testimony on page 36 through 39 reveal that the victim had several relationships with boys. His evidence casted doubt as to whether it was the appellant or someone else who had sexual intercourse with the victim. The matters raised above, cast doubt on the prosecution case. Based on the testimonies of the witnesses, and the contradictions in the evidence of PW2, I do not find credibility in the evidence of PW2. 25 As observed above, the only evidence that linked the appellant with the crime was that of PW2 which I found that it was not credible to sustain conviction under section 127(6) of the Evidence Act. I am of profound position that had the trial court properly evaluated the evidence on record, it would not have found PW2 reliable and her evidence credible. All the same, had the trial court considered the evidence of both the

prosecution witnesses and that of defence, it would not have arrived at the verdict. In view of the above analysis, I hold that the prosecution failed to prove the offence against the appellant beyond reasonable doubt. I find merit in the appeal and I proceed to quash the trial court's conviction against the appellant, set aside the sentence and order his immediate release from prison, unless he is held therein for other lawful cause. It is so ordered. Right of Appeal to the Court of Appeal fully explained. DATED at MOROGORO this 27th day of March 2025 H. A. KINYAKA JUDGE 27/03/2025 26

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.tanzlil.org/media/judgment/347237/source_file/dcffb12679c72337/Shaban_Mohamed_Msati_-_Judgement.pdf
CASE PAGE	https://chat.esheria.ai/case-law/tanzania/shaban-mohamed-msati-v-republic-rape-tanzlil-2024--6a3ea5243b1caa912981a52f

Prepared on 12 October 2026 · Esheria