

TANZANIA / JUDGMENT

19870817 TZCA Dar es Salaam

COURT
TZCADECIDED
17 August 1987

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

... (CORAM& MUSTAFA, J.~A., OMAR. J .A. And 'MAPIGANC', Ag. J .A.) . ·cRIMIM~ APPEM.o 9·
i981 · > OF: ~. SHOZI.AllldREW. ... APPELL~T -i J": ~ ~ ~ .. :.1,. . VERSUS ~-~-.;,_ «1... · · f. · r · ~
-- .. ~ ~ · ! " " - . . : . :1: , : · THE~EPtraLIC. · ~ · · · , , ~ · RFSP~D~T ; \ ; _ ; · · : : · (Appeal from the
0onvi.oti on of t-he C~ ; , · ~ · Htgh:aourt · of-""Tanzania at Tabora)

- · · · · : : ~ · · · ; ; ' · (Rubalna, J ·) dated the 12th day of -, · · ~ · ! ~uli, · 1985 . in JUDGMJ,l~T
OF ,t'HE COURT. ----. 2 - by this court. '!'bis court has the opportunity to assess his
demeneaU'. He wa9 nothing but a competent and credible witness"i 'Th~ appellant's appeal
agdffet oc:m\ic'l'llioh 1:1.nd. senten.oe to the ~gh Co'lll't was tinsuooeaatu.11 'the 'ai>t>e11~
w~a gi i,Jefi · leave tb appeal to thi,i Court out of ti.me by the High dourl which ~ertified the
following points of law for our oonsideraU01u 11
- 1. In .what oiroumatanoes would the evidence of a obild of fend~ years, given· an oath or
affi·rma,tion or without suoh oath or affirmation, ftn the basis ·of a conviction in the
absence of -orl'Obol'a'tt'lui? 2· Would failure by a oourt to state that it has warned itself be
fatal to its deoision? 11 We will deal with the app6llant's. appeal o~ly on ground 6 ~oh__
alleged that tht3 ,· Big~ Court judge bad misdirected himself "on the evidenoe ·of' obildri'll
wbiob need oo:r~ratiett : and whioh was laoking. Suob evid~nce could 11ot be basis of , '
conviction". We refer to section 1~7 of the Evidence Act which deals .. , .in part wi:1:11 ch£1d
wi't~sses=}, , · ; t : . · , , , . · 1 : · · · ' ' · · · , · - : ! . ~ : · · · : ! ~ : " , ~ ~ · ' . · "1. ! " · ; : I ') ' ! i t'i " t ~ ; t : :
· ; : f ~ r _ t Seo~!cfo: 127 {2} re~d's: · ~ · " · : i ... "Wner~ is' any · oriainal' .. ca:use, or
lmatter · any · child · 1 , , , : , ~ - , · ~ f .te~.ez: . y, ~ ~ s. -1. a. _ caj.led. t ■ ! : ! - w~rte.s_s:..d.oes
riot, - .. - . in t4e opin~on , !lf the cour~, _ understand the n_ature an · ' ·) of oatn· , /'h'ier'
e\iiiieno-e · maf~oe :teoeNed: , : thoUgh · no~ ii , , J ~t, , _ . lfPt~en ~ ~ n. . . o~'tlh, q: r: ..
a~fj, _ r~p, tiqn. ; ~ f : irt t4,8 · oP. ; ~ on . ~ ti, y, , .. of the court, to be recorded in the. proceedings,
he - - . ; , ~ POfl, Bessed o~ suffioient int~ligenoe _to justify t~ ~ _ieeep_tion r1 ot.. hi't
evi'd·enoe · "ancf 1~ders't~rid' the'. cf~tly--of sp~aking; the · 11ruth'. i_ · · : t~: · : i' · i' · · , ·
- _ , , , ; , : ! ~ ~ ~ ~ , · r. . ~ ~ ~ ! : J " : ! . ~ : . t~ .. , t, ~ ~ . o: : . · · ~ : ·
- (i) NciM'tb'ti'taii.dlng; -any '·rtile~ ot l"-aV~·'t:l1'e~o8ntra2'f where evidence received by
virtue of sub-section (2) · ii"giv~n:~on :!?·i.half of '!'he~i#dse~ut'i;o?f'anii ,i:s 1 :i:iot"; ;
cor:i~o'bo'rat~ed 'oy i.ny dtber~tnat'eri'a:f "enlienoe in :~P~PPo.~t .of, ~ , , \mpli~ti~""\l].~ }
~o_o~ed_t., , , 111>, e ~urt, : , · may, after--warning i ts·elf 'of' t·he·dan'ger of doing; so; · " " . ~ ~ .

~, {i:~r; :-:~ot .. qn ;t~t ce~dence, ,:~t.o.LCOJ;l'l,i-Q:t ..t~.e;~aCP.Used. if: .. i.t:~ , 0, . , , , ,
 ~~l),Y s~_~i.sf_~ed tpa_t .~h.~. chi;~1 ~s ~tel;t~n~ e.9.~::~~ ..- . " '1~ -r., "but~1;he"tr'lith
 11'.~' 1~ ,l.,l., ... ~ ... ~~~~~ ~- ~,c .. ,. ~.,:-J., , ~ ~~~~ __ ,i<~~~1;[~\~~~ view, in terms of the above
 1,rovisions, the sworn. t~ony ."of a obild ~f-t~nder years, does not. .nee4 o<;>rr9boraUon. 'l}
 ~'~.~".i./j;~-, ct~ .. 1 1", . . . ~ .. ~' I ...! ' . ~ 'J~ , ' I ~-~:~ ~ lo .<~ . . , : i " ;~_ 1 ~,~ :
 • ..!~.1.~ , " \ : ; , " ' , ~_... ~ ~ ~-ti.r~t :~!~i<~..-..-..(r,~: ~. =. t, • r:~::~~ 1, ~ ~ , ' • : \ • , : : : ~.f! ..
 1 ~ • . . , , ~~~~~ ~\; ;~' • . :-1_ .. , . 1"~~~~ ~~~~! : , : I. , • • ' ; • J ; , • ' ~ ~ ~' ~ ~ _
 ~c....,~_..c..c:~... " . ~~~~~ ,~ctt~l!,S' ;f\$'=~£::~~ ,:~_?:::~~.~~.,~.,~..~!~!~ ~ ~ ;... 3 - It
 can be treated as any other sworn testimony. It is interesting to contrast this new
 development in our law with that in England regarding child witnesses. In Archbold
 Criminal Pleading and Practice 40th Bii tion para 1431 ~and-- para: 1432 and para 1433 · deal
 with corrobora~n.on of children evidence. Briefly if evidence is given .unsworn,
 corroboration is necessary as a matter of law. Where however the evidence ~ s~orn (in
 whioh case although the evidence need not :t>e I .) corrQborated a.a a matte.r of law)the
 jury should be w~ned of I 'the danger of acting on uncorrobol'ated evidence. convict. on
 such. evidence, if bearing the warning in mind 1 thE1Y 'l'hey~rn~ :J .. j~-1~ ,. are none the
 less 001'Vinoed that the witness is tal;~tg. .. ; the truth). '1 1 . ,ln so far as. this appeal
 is .o0noerned we are satis.fied~ ! the evidence of P.W.l did not need corrobol'aU-o~ an(!. -
 th.at it could form the basis of a conviction. In- answer to the question of law posed by the
 High ~ t, we think that the sworn evidence of a ohild does not need- corroboration and the
 unsworn evidence of a child is G<JVer!l_ed . t . by ;_the provisions of section 121 (3) of the
 Evidence ,~ , Act a.a regards crr~boration. . . 'the appe~,l is dismissed . ' ~~~~~ . ; .. ~ ' .. --
 DA~ED at MWANZA t~~~- l?th day of August, 1987 .. , , , i A. MUSTAFA JUSTICE 9F AFPEAL

- ...I certify that this is a true copy of the cri-ginal~. ~l(t (J ~ H. M',OF'ey) D!lFUTY
REXlISTMR•
- . • ,.) I il I · I
- • • ~! - • , • ~ ~-- Lo : , : , , , , ~ ~ • • / - ; ~-- - : ~~~~_ , : _ ~ ~ ± 1/4'£' , ; ; ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ , ,
 _ : ~ ; f : c : ~ : o : ~ ; = . , : _ ~ ~ ~ ~ c , , -22bi)l~ ~ ~ > C .1d

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/326380/source_file/cfd52f98a340ae12/19870817_TZCA_Dar_es_Salaam.pdf

CASE PAGE <https://chat.esheria.ai/case-law/tanzania/shozi-andrew-v-the-republic-childwitness-tzca-1987>

Prepared on 13 October 2026 · Esheria