

TANZANIA / JUDGMENT

yasinta john vs republic 2019

tzhc 2164 29 october 2019

COURT
TZHCDECIDED
29 October 2019

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IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA (Kigoma District Registry) AT
KIGOMA CRIMINAL REVISION 12 OF 2019 (Originating from Criminal Case No. 234/2019 of the
District Court of Kibondo at Kibondo Before M.P. Kamuntu - RM) YASINTA S/O
JOHN..... APPLICANT VERSUS REPUBLIC... ..
RESPONDENT

JUDGMENT

29/10/2019 & 29/10/2019 MATUMA, J. The applicant was charged for procuring miscarriage contrary to section 151 of the Penal Code, Cap. 16 R.E. 2002. She was alleged to have administered to herself a Local medicine namely Muarobaini which resulted to miscarriage. She pleaded guilty and convicted on her own plea of guilty and sentenced to a custodial sentence of five years. During the inmate visit to Prison, the Criminal Justice Committee was informed of some irregularities in the trial of the applicant and such concern was brought to the attention of this court hence this revision proceedings. At the hearing of this application the applicant had no substantive arguments rather than mitigating that she is divorced from her husband, she left two children who she does not know where they are by now, her mother passed away and her father is too old and disabled (one leg man). The learned State Attorney Edna Makala at first she tried to challenge the application maintaining that the conviction and sentence was well entered and the application deserves a total dismissal. But when the court prompted her on the competence of the charge sheet she conceded that the same was defective as it was drafted in ambiguous manner. As rightly observed by the learned State Attorney, the applicant was subjected to an ambiguous charge which is totally not clear. In the particulars of the offence the applicant is alleged to have; "being her child with intent to procure her own miscarriage did unlawfully administer to herself local medicine" The problems with such particulars are the wordings that the applicant "being her child". It is actually not known what it means. Section 132 of the Criminal Procedure Act, Cap. 20. R.E. 2002 require every charge to give such necessary particulars as may be necessary for giving reasonable information as to the nature of the offence charged. Not only the accused but also the court should be able to understand the nature of the offence charged. The charge upon which the applicant was convicted is ambiguous. In fact, on the first day when the applicant was arraigned in the trial court, the court observed the ambiguity

and ordered; "The charge is ambiguous especially in particulars of the offence. The Prosecution side is given time to amend the same." That was on 25/09/2018. A day later a new charge was filed to replace the ambiguous one. The new charge only removed the word "with" and substituted for it "her. Thus the particulars in the first charge which was reading. "Being with child' was amended to read "Being her child'. The ambiguous was thus not removed but increased. That being the case, the applicant ought not to have been convicted and sentenced to an ambiguous charges" In the exercise of my Revisional Powers under section 372 and 373 (1) (a) of the Criminal Procedure Act supra, I quash the conviction of the applicant and set aside the sentence meted to her. I order her immediate release from custody unless otherwise held for some other lawful cause. ■ ! I I | 2- Wk J A. Maluma, Judge, II U 29/10/2019

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