IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MWANZA DISTRICT REGISTRY

AT MWANZA

CRIMINAL APPEAL No. 16 OF 2022

(Arising from Criminal Case No. 133/2021 in the District Court of Misungwi)

LUME DANGA .... APPELLANT

VERSUS

REPUBLIC .... RESPONDENT

JUDGEMENT

8 & 23/9/2022

ROBERT, J:-

The appellant, Lume Danga, was charged at the District Court of Misungwi in criminal case No. 133 of 2022 with the offence of Impregnating a school girl contrary to section 60A (3) of the Education Act, as amended by Act No. 2 of 2016. After a full trial, he was convicted and sentenced to thirty years imprisonment. Aggrieved, preferred this appeal challenging his conviction and sentence.

The prosecution alleged that on diverse dates and time between August to October, 2021 at Ihelele village within the district of Misungwi in Mwanza region, the appellant did commit sexual intercourse with one K d/o R (name hidden) a school girl of Nkolati secondary school and, as a result, impregnated her. The prosecution successfully lined-up seven

witnesses who to prove the alleged offence. Dissatisfied with his conviction and sentence, the appellant preferred this appeal on the following grounds:

1. *That, there was no sufficient evidence to prove that the victim (PW2) was a secondary school girl and the age of the victim was not proved as the law requirements*
2. *That the trial magistrate erred in law and facts to convict the appellant by relying on uncorroborated evidence when the prosecution failed to brought/produce a clinic card corroboration of the evidence of PW1, PW2, LW3 and PW4.*
3. *That, the trial magistrate misdirected himself when admitted the evidence of PW1 a witness who appeared illegally before Hon. Trial courts bad in law.*
4. *That the whole trial within a trial (TWT) was taken in the vague procedure (an inquiry was taken to the unknown procedure in the criminal trial before admitting the caution statement as an exhibit). Thus, exhibit P2 was admitted.*
5. *That the trial erred in law and fact to convict the appellant on unreliable evidence and incredible witness contrary to S. 198(1) of the Criminal Procedure Act Cap 20 R.E 2019 (PW3 and PW4 were not sworn before the trial court).*
6. *That the trial magistrate grossly erred in law and fact for failure to summarize and evaluate the appellant's evidence (defence) which inevitably led to wrong and biased conclusions/inferences resulting in miscarriage of justice.*
7. *That trial magistrate erred in law and fact by convicting and sentencing the appellant on the basis of the planted case on the appellant.*

8. *That the whole proceeding, judgment, conviction and sentence tried by the trial court was not in compliance with the law and procedure.*
9. *That the trial court erred in law in fact by sentencing the appellant on the unspecified provision of the law as required by S. 312(2) of the criminal procedure Act Cap 20 R.E 2019*
10. *That the case against the appellant was not proved beyond a reasonable doubt.*

At the hearing of the appeal, the appellant appeared in person without legal representation whereas the Republic was represented by Ms. Maryasinta Lazaro, Senior State Attorney.

When asked to highlight on his grounds of appeal, the appellant implored the Court to adopt and consider his grounds of appeal as filed and set him free because he was not involved in the alleged crime.

In response, Ms Lazaro informed the Court that the Republic supports the appeal and proceeded to argue the tenth ground of appeal which she considered to be capable of disposing of the appeal. She argued that, the case against the appellant was not proved beyond reasonable doubt as the evidence of PW2 which was used by the trial Court to implicate the appellant simply stated that the appellant had sexual intercourse with the victim. She maintained that since the appellant was charged with impregnating a school girl under section 60A (3) of the Education Act, the prosecution was required to bring evidence to establish

that the appellant is the one who impregnated the victim, such as the DNA test results. Unfortunately, that evidence was not supplied and therefore the alleged offence was not proved.

From the submissions of parties above, I should pose here and make a determination on the merit of this appeal.

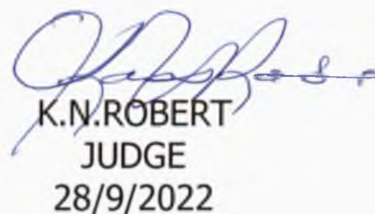
Starting with the tenth ground of appeal, this Court is in agreement with both parties that the evidence adduced was not sufficient to prove the offence charged. To prove the offence of impregnating a school girl, the prosecution needed to establish that the girl allegedly impregnated was attending either primary or secondary school at the time of the alleged crime and the fact that she was impregnated by the accused person. Although in the present case both PW1 and PW2 informed the trial Court that the victim was a student at Nkolahi Secondary School at the time of the alleged crime, there was no evidence to prove that the accused person is the one who impregnated the victim. The fact that the appellant had sexual intercourse with the victim several times, as alleged by PW2, is not sufficient proof of the allegation that the appellant is the one who impregnated her. When a person is accused of impregnating a school girl the implication is that the person so accused shares genetic relationship with the child alleged to result from the said pregnancy which

can be proved by scientific evidence, and in the circumstances of this case, the DNA test evidence was much more appropriate to ascertain the fatherhood of the baby. Unfortunately, that evidence was not tendered by the prosecution.

Lack of that important piece of evidence creates doubt as to whether the appellant was indeed responsible for the offence. In the absence of such kind of evidence, it was unsafe to find the appellant guilty of impregnating the victim.

That said, this Court finds that the offence of impregnating a school girl was not proved beyond reasonable doubt. In the circumstances, I find no reason to deliberate on the remaining grounds of appeal. Consequently, this appeal is allowed, conviction quashed and the sentence is set aside. The appellant is to be released forthwith unless he is held for other lawful causes.

It is so ordered.



K.N.ROBERT
JUDGE
28/9/2022