

IN THE HIGH COURT OF TANZANIA

(DISTRICT REGISTRY OF MTWARA)

AT MTWARA

CRIMINAL APPEAL NO. 9 OF 2022

*(Originating from Original Criminal Case No. 49 of 2019 in the District Court of Mtwara
at Mtwara)*

HAMISI YUSUPH MOHAMED.....APPELLANT

VERSUS

THE REPUBLIC..... RESPONDENT

JUDGMENT

Muruke, J.

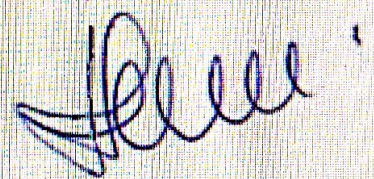
Hamisi Yusuph Mohamed, the appellant was charged and convicted for an offence of attempted rape, to a girl child aged three (3) years. He was thus, sentenced to serve imprisonment for life by the District Court of Mtwara at Mtwara. Being dissatisfied, he filed present appeal raising five grounds as articulated in the memorandum of appeal. On the date set for hearing,

.. . . .

Hamisi Yusuph Mohamed, the appellant, was convicted for an offence of attempted rape, to a girl child aged three (3) years. He was thus, sentenced to serve imprisonment for life by the District Court of Mtwara at Mtwara. Being dissatisfied, he filed present appeal raising five grounds as articulated in the memorandum of appeal. On the date set for hearing, appellant who was in person, requested his grounds of appeal to be adopted as submission in chief, reserving right to rejoin, after respondent submission.

I

On the other hand, Wilbroad Ndunguru, Learned State Attorney, supported the appeal, basing on, ground one, on defectiveness of the charge sheet. In his brief submission he said: Charge sheet is made under section 132



(1) (2) (c) of the Penal Code Cap 16 R.E 2002, by then. In the particulars of the offence, there is serious anomaly. Particulars of the offence in terms of section 132 (2) of the Penal Code Cap 16 R.E 2022 by now reads that:-

"With intent to procure prohibited sexual intercourse"

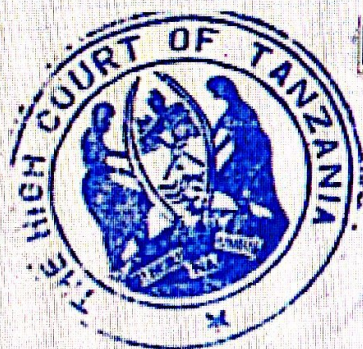
By omitting the above words, there is no elements of the offence. The omission is not curable insisted learned State Attorney.

Having heard learned State Attorney and gone through court records in deed, it is settled principal that, an accused person must know the nature of the case facing him. This can be realized, if a charge discloses elements of an offence. In the absence of disclosing the element of offence, appellant was not adequately told the nature of the offence he was facing. Thus charge was, therefore, defective. I understanding, defective charge that did not disclose any offence in the particulars of the offence, could not be cured under section 388 of the Criminal Procedure Act. More so, re trial cannot be ordered under the circumstance of this case.

As rightly pointed out by the appellant in ground one of his appeal and supported by Learned State Attorney, appellant was serving illegal sentence, then cannot be left. Conviction is quashed, sentence is set aside,

cured under section 388 of the Criminal Procedure Act. More so, re trial cannot be ordered under the circumstance of this case.

As rightly pointed out by the appellant in ground one of his appeal and supported by Learned State Attorney, appellant was serving illegal sentence, then cannot be left. Conviction is quashed, sentence is set aside, appellant be released from prison unless otherwise lawfully held with other offences.




Z. G. Muruke

Judge

25/11/2022