

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE DISTRICT REGISTRY OF TABORA**

**AT TABORA**

**DC. CRIMINAL APPEAL NO. 22 OF 2022**

*(Originating from Criminal Case No. 45 of 2021 in the District Court of  
Tabora.)*

**IDDY ATHUMAN MANEVA.....APPELLANT**

**VERSUS**

**THE REPUBLIC..... RESPONDENT**

**JUDGEMENT**

*Date of Last Order: 03/07/2023*

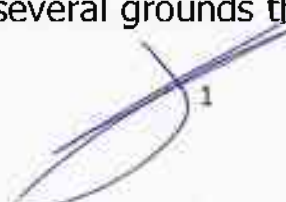
*Date of Judgment Delivery: 27/07/2023*

**MATUMA, J.**

Iddy Athumani Maneva the appellant herein, was charged before the District Court of Tabora for **RAPE** contrary to sections

It was alleged that on 30/01/2021 at Kariakoo Street within Tabora Municipal in Tabora Region, the appellant did have canal knowledge with the victim girl aged 10 years old. Upon a full trial, the appellant was found guilty, convicted and sentenced to serve life imprisonment.

The appellant was aggrieved by the said conviction and sentence hence this appeal with several grounds that carries one major complaint



to the effect that the prosecution case was not proved beyond reasonable doubts and the sentence imposed against him is illegal.

At the hearing of this appeal, the appellant represented himself while the respondent was represented by Mr. Nurdini Mmary and M/S Aneth Makunja learned State Attorneys.

The appellant prayed that his appeal be allowed on the strength of his grounds of appeal.

On the other side, Mr. Mmary learned state attorney conceded with the appellant's appeal stating that the appellant was wrongly charged under section 131 (3) of the Penal Code which relates to victim girls under the age of 10 years but in the instant matter the victim girl was not under such age. In that respect the learned state attorney argued that the appellant was prejudiced and the trial court was misled as a result of such drafting whereby it sentenced the appellant to life imprisonment.

After hearing the submissions from both parties and going through the records of the trial Court, it is evident that the appellant was charged, convicted, and sentenced under a defective charge. The charge on the statement of offence reads;

***"RAPE: Contrary to Section 130(1), (2) (e) and 131(1) and (3) of the Penal Code [Cap 16 R.E 2019]"***

The statement of offence included section 131(3) which sets out the punishment of someone who commits the offence of raping a child under the age of ten (10) years to be life imprisonment.

In the case at hand, the appellant was alleged to have raped a child of ten years. Therefore, the charge should have excluded section 131(3) of the Penal Code. The question to be considered is whether the anomaly was fatal in law.

In any criminal trial, the charge is the foundation of the accusation or complaint against the accused. It has therefore, to be framed properly in accordance to the law creating the offence and the sentence thereof in case of a conviction. This is because one basic requirement of a fair trial in a criminal case is to give precise information to the accused as to the accusation against him. Such requirement is elaborated in Section 135 (a) (ii) of the **Criminal Procedure Act [Cap 20 R.E 2019]** putting more emphasis on the fact that it is the charge or information which commences a criminal trial in a subordinate court and the High Court respectively.

In the circumstances, a defective charge or information as the case may be, cannot support or commence a lawful trial unless it is amended or substituted before the completion of the trial in accordance with the law.

Since the appellant was tried on a defective charge, he then did not receive a fair trial as the defective charge unduly prejudiced the appellant. See ***Antidius Augustine vs Republic (Criminal Appeal No. 89 of 2017)*** where the Court of Appeal at Bukoba emphasized that;

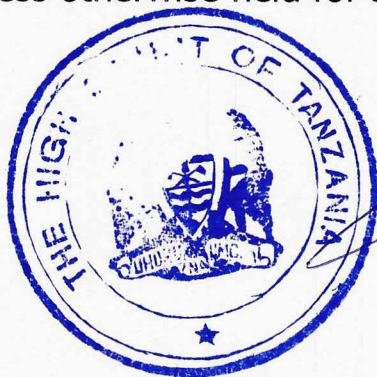
*"It is most important that before assuming trial of a case a magistrate or a judge must thoroughly peruse the charge or information, as the case may be, which is presented before*



*the court to ensure fair administration of justice and to give credence and respect to the criminal justice system as a whole. Failure to do so may lead to unexpected consequences to both sides of the case”*

In the instant matter not only the appellant but also the trial magistrate were all prejudiced in dealing with the category of rape which was not real. In the case of ***Amiri Omary versus The Republic, criminal appeal no. 299 of 2015*** CAT at Tanga, the court of appeal dealt with the matter very similar to the instant one. The Appellant in that case was subjected to section 131 (3) of the Penal Code while the victim was not befitting in the said provision. The panel of three justices of appeal found that it was wrong for the prosecution to arraign the accused under the wrong sentencing provision.

In the upshot, I hereby nullify the entire proceedings. The conviction of the appellant is hereby quashed and the sentence meted against him set aside. I order the appellant to be released from custody unless otherwise held for some other lawfully cause.



**MATUMA**  
**JUDGE**  
**27/07/2023**

**COURT:** Judgement delivered in chambers in the presence of the appellant in person and M/S. Aneth Makunja learned State Attorney for the Republic.

Right of appeal explained.



**MATUMA**  
**JUDGE**  
**27/07/2023**