

**THE UNITED REPUBLIC OF TANZANIA  
JUDICIARY  
IN THE HIGH COURT OF TANZANIA  
MBEYA SUB – REGISTRY  
AT MBEYA  
CRIMINAL APPEAL NO 161 OF 2023**

*(Originating from the District Court of Mbeya at Mbeya, in Criminal Case No. 71 of 2022).*

**JOSHUA MBOSA KAMBARAGE.....APPELLANT**  
**VERSUS**  
**REPUBLIC.....RESPONDENT**

**JUDGMENT**

Date: 19 & 27 March 2024

**SINDA, J.:**

The appellant Joshua Mbosa Kambarage was charged with and convicted of the offence of rape contrary to section 130 (1), (2) (e) and 131 (1) of the Penal Code [Cap 16 R.E 2022] (the **Penal Code**). The District Court of Mbeya at Mbeya (the **Trial Court**) sentenced him to thirty (30) years imprisonment.

The particulars of the offence are that on diverse dates between May and June 2021 at Ilemi area within the District and Region of Mbeya, the appellant had carnal knowledge of MAK (name withheld), a girl who was ten (10) years of age.

Against that decision, the appellant appeals on the following grounds that:

1. The Trial Court erred in law and fact by entering judgment without imposing a sentence against the appellant;
2. The Trial Court erred in law and fact by convicting and sentencing the appellant while it was very clear that the appellant was of unsound mind; and
3. The Trial Court erred in law and fact for convicting and sentencing the appellant while the case was not proved beyond reasonable doubts.

The appeal hearing proceeded by way of written submissions, where parties submitted on the grounds of appeal contained in the petition of appeal. The appellant was represented by Ms. Martha Gwalema, learned counsel and the respondent was represented by the learned State Attorney.

Beginning with the first ground of appeal, the appellant's counsel submitted that the Trial Court erred in law and fact by entering judgment without imposing a sentence against the appellant.

The appellant's counsel argued that the Trial Court's judgment was incompetent because the appellant was convicted in terms of section 235 (1) of the Criminal Procedure Act [Cap 20 R.E 2022] (the **CPA**) but not sentenced. She stated that the judgement did not specify the punishment to which the appellant was sentenced. She contended that the Trial Court failed to comply with the provisions of section 235 (1) and 312 (2) of the CPA that once the Court finds the accused guilty, then it must convict and sentence him.

However, the respondent's counsel argued that the ground is baseless since the appellant was convicted of the offence of rape and sentenced to 30 years imprisonment as shown on page 31 of the typed copy of the proceedings of the Trial Court (the **Proceedings**) which states that "*The accused is sentenced to serve thirty years imprisonment in jail*".

In rejoinder, Ms. Gwalema emphasized the provisions of section 312 (2) of the CPA and the argument by the respondent's counsel that the sentence was from the Proceedings and not from the judgment.

In the case at hand, I will be guided by the provisions of section 235 (1) of the CPA, which provides that:

*"235 (1) The court, having heard both the complainant and the accused person and their witnesses and the evidence, **shall convict** the accused person and **pass sentence** upon or make an order against him according to law or shall acquit or discharge him under section 38 of the Penal Code."*

The above provision of the law is read together with section 312 (2) of the CPA, which provides that:

*"312 (2) In the case of **conviction, the judgment** shall specify the offence of which, and the section of the Penal Code or other law under which, the*

*accused person is convicted **and the punishment to which he is sentenced.**"*

The question is whether the judgement at hand meets the provision of section 235 (1) and 312 (2) of the CPA. To properly determine the issues in this appeal, I must reproduce the conviction part of the judgement which provides that:

*"Having so explained, it is the opinion of this court that the prosecution evidence has proved the case beyond reasonable doubt. This court hereby finds the accused person guilty as charged and convicts him of the offence of rape contrary to section 130(1), (2)(e) and 131(1) of the Penal Code Cap 16 R.E 2019.*

*Dated at Mbeya this 31<sup>st</sup> Day of October 2022."*

After careful analysis of the judgement, I am convinced by the arguments submitted by the appellant's counsel that both conviction and sentence must be present to form a proper and competent judgment as provided under

section 235 (1) and 312 (2) of the CPA. The omission of either or both of them renders the judgment incompetent.

The conviction part of the judgment, as quoted above, clearly shows that the Trial Court convicted the appellant but did not sentence him contrary to the clear provisions of section 235 (1) and 312 of the CPA. In the absence of a sentence in the Trial Court's judgment which the appellant is serving, there is no competent appeal before this Honourable Court.

In the case of ***Elia John vs The Republic***, Criminal Appeal No 267 of 2011 (CAT at Arusha, Tanzlii) on page 4, the CAT stated:

*"The failure by the trial court to comply with the mandatory provisions of sections 235 (1) and 312 (2) of the Criminal Procedure Act, rendered its judgment incompetent which could neither be upheld nor dismissed by the first appellate court."*

The omission of the sentence in a judgment being a matter of law and of incurable nature, I find that the first ground of appeal has merit and do not wish to determine the rest of the grounds as they originate from an incompetent judgment.

In the event, I remit the record of the trial to the Trial Court for the trial magistrate to compose a proper judgment in an expedited manner, by entering a conviction and then sentencing the appellant in accordance with the provisions of section 235 (1) and 312 (2) of the CPA.

In the meantime, I order that the appellant remain in custody pending the finalization and delivery of the judgment by the Trial Court.

In the interests of justice, I further direct that the prison sentence should start to run from the day the appellant was initially incarcerated, which was the 31 October 2022.

Thereafter, the appellant may, if he deems it fit, process his appeal in accordance with the relevant laws.

It is so ordered.

The right of appeal was explained.

DATED at MBEYA on this 27 day of March 2024.

**A.A. SINDA**  
**JUDGE**



The Judgment is delivered on this 27 day of March 2024 in the presence of the appellant who appeared in person and present by Ms. Martha Gwalema and Mr. Rajab Msemo counsel for the respondent.



**A. A. SINDA**  
**JUDGE**

*A. A. Sinda*