

Citation	Parties	Legal Principles Discussed
CRIMINAL APPEAL NO. 8 OF 2006- COURT OF APPEAL OF TANZANI AT DODOMA- MUNUO, J.A., KAJI, J.A., And KIMARO, J.A.	KARIMU s/o KIARA Vs. THE REPUBLIC (Appeal from the Judgment of the High Court of Tanzania at Dodoma- Criminal Appeal No. 72 of 2004 -Somi - PRM/Extended Jurisdiction)	Offence of rape c/ss 130 (1) (2) (e) and 131 (1) of the Penal Code, Cap. 16 as amended by the Sexual Offences Act No. 4 of 1998, and sentenced to 20 years imprisonment and 10 strokes by the trial court.

**IN THE COURT OF APPEAL OF TANZANI
AT DODOMA**

(CORAM: MUNUO, J.A., KAJI, J.A., And KIMARO, J.A.)

CRIMINAL APPEAL NO. 8 OF 2006

**KARIMU s/o KIARA APPELLANT
VERSUS
THE REPUBLIC RESPONDENT**

**(Appeal from the Judgment of the High Court of
Tanzania at Dodoma)**

(Somi - PRM/Extended Jurisdiction)

**dated the 23rd day of September, 2005
in
Criminal Appeal No. 72 of 2004**

JUDGMENT OF THE COURT

19 & 22 JUNE, 2007

MUNUO, J.A.:

This is a second appeal from Criminal Case No. 163 of 2003 in the District Court at Kiomboi within Singida Region wherein the appellant was convicted of rape c/ss 130 (1) (2) (e) and 131 (1) of the Penal Code, Cap. 16 as amended by the Sexual Offences Act No. 4 of 1998, and sentenced to 20 years imprisonment and 10 strokes by the trial court. On appeal, Somi, PRM Extended Jurisdiction upheld the conviction. He, however, set aside the unlawful sentence and substituted therewith, the mandatory minimum sentence of 30 years imprisonment for the charged crime. Aggrieved, the appellant lodged this appeal to challenge the conviction and sentence.

The facts are straight forward. On the material night PW1 Anna Bernard was going to her sister's house. She encountered the appellant near his house: he was armed with a knife. He grabbed PW1's hand and threatened to stab her if she cried out. Transfixed PW1 dared not shout. The appellant took her to his house where he stripped her naked and proceeded to rape her. During the sexual assault, PW1 cried for help whereby PW2 Obedi Issa and PW3 Maginga Shabani who happened to be passing by, responded by

knocking on the appellant's door requiring him to set the victim free in vain. PW2 and PW3 forced the door open. They met the victim at the sitting room as she rushed out of the appellant's bedroom naked. The appellant threw her clothes at her. The matter was reported to the village office. Two militiamen proceeded to arrest the appellant under a warrant of arrest. He was subsequently brought to court to face the charge of rape. The trial court grounded a conviction and sentenced the appellant to 20 years imprisonment and 10 strokes corporal punishment. Aggrieved, the appellant lodged the first appeal. Somi, PRM Extended Jurisdiction, sustained the conviction. He set aside the unlawful sentence and substituted therewith, the scheduled minimum sentence of 30 years imprisonment for rape. Further aggrieved, the appellant preferred this second appeal.

In his six grounds of appeal, the appellant vehemently denied raping the complainant. He claimed that the case was fabricated to fix him because he had a land dispute with the father of the victim. He faulted the courts below for convicting him on weak and uncorroborated evidence. He also claimed that he was not properly

identified. Contending that his guilt was not established beyond all reasonable doubt, the appellant urged us to quash the conviction and allow the appeal.

Mr. Tangoh, learned State Attorney, supported the conviction and prayed that the appeal be dismissed in its entirety because it is lacking in merit. He observed that the raped girl was retrieved from the appellant's house naked after PW2 and PW3 broke open the door in response to the victim's alarm for help. Because the appellant was found in his house raping the victim and would not open the door until it was broken open during which time the victim rushed out naked, the appellant was caught ready handed and was properly convicted he maintained. The story of a land dispute with the father of the victim is an afterthought, the learned State Attorney, observed.

It is so. The appellant seized PW1 at knife point, led her to his bedroom and raped her. She cried out for help whereby PW2 and PW3 who happened to be passing by broke the door open and

enabled her escape, naked. The appellant threw her clothes at her after PW2 and PW3 entered the house to rescue her. In the light of such glaring evidence, the story of a land dispute was an afterthought. When PW1 testified, the appellant never cross-examined her on the alleged land dispute. We find no merit whatsoever in this appeal.

We accordingly dismiss the appeal.

DATED at DODOMA this 22nd day of June, 2007.

E.N. MUNUO
JUSTICE OF APPEAL

S.N. KAJI
JUSTICE OF APPEAL

N.P. KIMARO
JUSTICE OF APPEAL

I certify that this is a true copy of the original.

(S.M. RUMANYIKA)
DEPUTY REGISTRAR