IN THE COURT OF APPEAL OF TANZANIA

AT ARUSHA

(CORAM: MMILLA, J.A., MZIRAY, J.A., And MWANGESI, J.A.)

CRIMINAL APPEAL NO. 4 OF 2017

ISSA RAMADHAN ..... APPELLANT

VERSUS

THE REPUBLIC .....RESPONDENT

(Appeal from the decision of the High Court of Tanzania

at Moshi)

(Sumari, J.)

Dated the 15th day of December, 2016

in

DC Criminal Appeal No. 16 of 2016

JUDGMENT OF THE COURT

3rd & 9th October, 2018

MWANGESI, J. A.:

At the District Court of Mwanga at Mwanga within the Region of Kilimanjaro, the appellant herein stood charged with the offence of unnatural offence contrary to the provisions of section 154 (1) (a) (c) of the Penal Code, CAP 16 Volume 1 of the Laws R.E. 2002 (**the code**). The particulars of the offence were to the effect that, on the 8th day of March, 2015 at about 20: 00 hours at Kileo kwa Mlaki village within Mwanga district in Kilimanjaro Region,

the appellant did unlawfully have carnal knowledge to one HS, a girl aged 3 years old, against the order of nature.

When the charge was read over to the appellant on the 11th day of March, 2015, he pleaded not guilty. Thereafter, the case was mentioned thrice before the court was told on the 6th May, 2015, that the investigation of the case had been completed. The case was therefore, ready for the preliminary hearing. And when the charge was reminded to the appellant on the 3rd day of June, 2015 when the case was called on for preliminary hearing, the appellant pleaded guilty. The trial magistrate, then invited the prosecutor, to read out the facts of the case to the appellant. His response to the same was that, they were all correct and true. In that regard, the trial magistrate convicted the appellant on his own plea of guilty, and sentenced him to the statutory sentence of life imprisonment.

The appellant was dissatisfied by the conviction and sentence meted out to him by the trial magistrate. He challenged it to the High Court of Tanzania at Moshi, where he was however not successful. Still undaunted, he has preferred this second appeal to the Court. His appeal has been premised on two grounds namely:

1. *That the learned trial magistrate and the first appellate Judge erred, in law and fact for failure to follow the procedure for taking a plea of guilty that is why they arrived at a wrong decision.*
2. *That the learned trial magistrate and the first appellate Judge, erred in law and fact, in convicting the appellant in his alleged plea of guilty which was not unequivocal.*

Additionally, on the 3rd day of August, 2018, the appellant lodged written submission in support of his grounds of appeal.

When the appeal came for hearing before us on the 3rd day of October, 2018, the appellant entered appearance in person legally unrepresented and hence, fended for himself whereas, the respondent/Republic, had the services of Ms Mary Lucas, learned State Attorney, who was assisted by Ms Cecilia Foka Ndaweka, also learned State Attorney.

Upon the Court, clarifying the grounds of appeal to the appellant, and inviting him to address it on those grounds, the appellant requested the Court to put into consideration his grounds of appeal, and adopt the written

submission which he had earlier on lodged as hinted above. With those words, he had nothing to add in the submission in chief.

On her part, the learned State Attorney declared her interest from the very outset that, she was resisting the appeal. She supported the two lower courts in convicting the appellant on the charged offence and the sentencing him to life imprisonment, because it is the statutory sentence for the committed offence. The learned State Attorney argued further that, the appeal by the appellant to the High Court was untenable in view of the stipulation under the provisions of section 360 (1) of the Criminal Procedure Act, CAP 20 R.E. 2002 **(the CPA**).

Substantiating her stance, Ms Lukas, told the Court that, in the instant appeal the appellant was convicted on his own plea of guilty. Referring us at page 5 of the record of appeal, she argued that, after the charge was read over to the appellant, he pleaded guilty. As a result, the learned trial magistrate invited the prosecutor to read to the appellant the facts of the case, which were also readily admitted by the appellant to be correct and true. It was on the basis of such clear admission by the appellant to the charged offence that, the trial magistrate convicted him to the charged offence and sentenced him accordingly. Under the circumstances, the learned first

appellate Judge was correct in dismissing the appeal by the appellant, in view of the provision of section 360 (1) of **the CPA.** Placing reliance on the decision in **Khalid Athuman Vs Republic,** Criminal Appeal No. 103 of 2005 (unreported), she urged us to dismiss the appeal in its entirety.

The thrust on us in the light of what has been submitted above, is whether or not, the appeal by the appellant is founded. To be in a proper perspective of appreciating the issue before us, we take the liberty to reproduce verbatim, what transpired in court on the 3rd day of June, 2016, when the case was called on for preliminary hearing:

> *"**Court**: Charge is read over and explained to the accused,*
>
> ***Accused**: It is true that I did have carnal knowledge against the order of nature with the victim because her father did not pay me my salary;*
>
> ***Court**: plea of guilty entered in respect of the charged offence*
>
> *Signed: magistrate*
> *3/6/2015*

FACTS

1. *Name and address as per charged sheet*
2. *On the 8th day of March, 2015, at about 20: 00 hours at Kileo B Mlaki village an accused (sic) did have carnal knowledge with her HS, against the order of nature who is three years old in the forest.*
3. *The matter was reported at the police Mwanga and the accused was arrested and charged as per the charge sheet.*

Prosecutor: *I pray to tender the caution statement as exhibit in court.*

Court*: Accused is asked whether the facts recorded by the Public Prosecution are true and whether he agrees to the quotation (sic) statement tendered in court.*

Accused*: I do admitted (sic) all the facts narrated by the prosecutor and the quotation (sic) statement.*

Signed *: by accused"*

In view of what has been reflected in the proceeding quoted above, we are unable to accept the contention of the appellant in his first ground of

appeal that, there was failure by the learned trial magistrate to record his plea of guilty. On the contrary, we are strongly convinced that, the magistrate complied with what the law required of him. Either, the contention by the appellant in the second ground of appeal that, his plea was equivocal, is as well without founded basis. The plea by the appellant that;

> *"it is true that I did have carnal knowledge against the order of nature with the victim because her father had not paid me my salary",*

is not in support of the averment by the appellant that, he did not understand what he was asked to plead. We hold that he understood it and that, the magistrate complied with what has been stipulated under the provisions of section 228 (2) of **the CPA** thus:

> *"If the accused person admits the truth of the charge, his admission shall be recorded as nearly as possible in the words he uses and the magistrate shall convict him and pass sentence upon or make an order against him, unless there appears to be sufficient cause to the contrary."*

The procedure for taking pleas of accused persons, was also explained in detail by the then Court of Appeal of East Africa, in **Adam Vs Republic** [1973], where Spry Vice President (as he then was), held that:

> *"Where a person is charged, the charge and the particulars should be read out to him so far as possible in his own language, but if that is not possible, then in a language which he can speak and understand. The magistrate should the explain to the accused person all the essential ingredients of the offence charged. If the accused then admits all those essential elements, the magistrate should record what the accused has said as nearly as possible in his own words and then formally enter the plea of guilty. The magistrate should next ask the prosecutor to state the facts of the alleged offence and, when the statement is complete, should give the accused person an opportunity to dispute or explain the facts or to add any relevant facts. If the accused person does not agree with the statement of facts, or asserts additional which if true, might raise a question as to his guilty, the magistrate should record a*

change of plea to "not guilty" and proceed to hold a trial. If the accused person does not deny the alleged facts in any material respect, the magistrate should record a conviction and proceed to hear any further facts relevant to sentence. The statement of facts and the accused's reply must, of course, be recorded."

In line with what has been indicated above, we are left with no any flicker of doubt that, the appellant in this appeal understood well the charge which stood facing him, and that is why even after the facts had been read in detail by the prosecutor, he still maintained his plea that, they were all correct and true. What we note is that, the attempt by the appellant to change the plea which he previously entered before the trial court, has come as a mere an afterthought, of which, we are reluctant to accommodate.

And once it is held that, the plea of the appellant was unequivocal, as argued by the learned State Attorney, no appeal lay to the High Court in terms of the provisions of section 360 (1) of **the CPA** which reads that:

"No appeal shall be allowed in the case of any accused person who has pleaded guilty and has been

convicted on such plea *by a subordinate court except as to the extend or legality of the sentence"* [Emphasis supplied]

Applying the above provisions in the case of Jonas **Samwel @ Kabaka and Charles Bakari Vs Republic,** Criminal Appeal No. 58 of 2005 (unreported), where the appellant had been convicted by the trial court on a plea of guilty, the Court held that:

"On the basis of the record, we entertain no doubt in our mind that, the learned first appellate correctly dismissed the appeal. The appellants' plea of guilty being unequivocal, they were correctly convicted on their own plea of guilty. It would follow that no appeal would lie on the plea of guilty in terms of section 360 (1) of the Criminal Procedure Act."

In the same vein, the appellant in this having been convicted on his own plea of guilty, no appeal lay to the High Court. As such, the first appellate Judge was correct to dismiss the appeal. The appellant could only have challenged the sentence. Nonetheless, regard being to the fact that, the one imposed by the trial court was the statutory minimum one, there was no way

in which, it would have been altered. To that end, the appeal by the appellant is found to be wanting in merit, it is dismissed in its entirety.

Order accordingly.

DATED at **ARUSHA** this 8th day of October, 2018.

B. M. MMILLA
JUSTICE OF APPEAL

R. E. S. MZIRAY
JUSTICE OF APPEAL

S. S. MWANGESI
JUSTICE OF APPEAL

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

B. A. Mpepo
DEPUTY REGISTRA
COURT OF APPEAL