IN THE COURT OF APPEAL OF TANZANIA

AT MOSHI

(CORAM: MUGASHA, J.A., MWANDAMBO, J.A, And MAIGE, J.A.)

CRIMINAL APPEAL NO. 248 OF 2020

AMANI ONESMO @ RUME .....APPELLANT

VERSUS

THE REPUBLIC..... RESPONDENT

(Appeal from the decision of the High Court of Tanzania at Moshi)

(Mutungi, J.)

dated the 20th day of May, 2020

in

DC. Criminal Appeal No. 73 of 2019

.....

JUDGMENT OF THE COURT

22nd & 29th September, 2023

MWANDAMBO, J.A.:

The District Court of Mwanga at Mwanga convicted the appellant Amani Onesmo @ Rume on his own plea of guilty of unnatural offence involving a young boy aged six years. The conviction earned the appellant a sentence of life imprisonment. His appeal to the High Court sitting at Moshi was dismissed. Undaunted, he has preferred the instant appeal.

Before we delve into the merits or demerits of the appeal, we find compelled to preface our discussion with the factual background brief as it

is. On 3 May 2019, the appellant appeared before the trial court to answer the charge of unnatural offence predicated upon section 154(1) (a) of the Penal Code to which he is recorded to have said: *"It is true, he bored me; he wanted to destroy stuff(s)"*. Following that answer, the trial magistrate entered a plea of guilty which was followed by a narration of the facts by the prosecutor.

The substance of the facts was that the victim; a six years boy visited the appellant's house on 29 April, 2019 at 15:00 hours whereupon, the appellant forced him to have sexual intercourse against the order of nature and succeeded before being discovered and subsequently reported to the police. Ultimately, he was arrested by the police and, upon interrogation, he admitted the allegations. After reading such facts, the appellant is recorded to have admitted thereto stating: *"I admit all facts are true. I did have sexual intercourse with him against nature to punish him."* Satisfied that the facts admitted by the appellant constituted admission to the offence charged, the trial Magistrate entered a finding of guilty followed by conviction and, ultimately, the sentence challenged in this appeal.

On appeal, the High Court (Mutungi, J), sitting at Moshi considered the appellant's complaints in his petition of appeal raising the issue whether his plea was unequivocal warranting conviction. Guided by the decision of the defunct Court of Appeal for East Africa in **Adan v. Republic** [1973] EA 445 on what entails an unequivocal plea of guilty, the High Court found the plea on the facts admitted by the appellant as an unequivocal plea of guilty which warranted a finding of guilty. It thus dismissed the appellant's appeal hence, this appeal upon five grounds of appeal. However, in substance, they all boil down to the same issue determined by the High Court; whether the appellant's plea was unequivocal capable of grounding conviction.

At the hearing of the appeal, the appellant who appeared in person, unrepresented, had nothing in elaboration of his grounds. He simply urged the Court to consider them and allow the appeal. On the adversary side, Ms. Revina Prosper Tibilengwa, learned Principal State Attorney and Ms. Eliainenyi Njiro, learned Senior State Attorney appeared to represent the respondent Republic. It was Ms. Njiro who addressed the Court supporting the appeal.

The learned Senior State Attorney began her address with section 361(1) of the Criminal Procedure Act (the CPA) which prohibits appeals from conviction on the accused's own plea of guilty except against legality and severity of sentence. Ms. Njiro argued and, rightly so, based on case law that, the prohibition is qualified in cases involving conviction on equivocal plea of guilty. For that proposition, she placed reliance on the Court's unreported decision in **Msafiri Mganga v. Republic,** Criminal Appeal No. 57 of 2012 cited in **Samson Marco and Another v. Republic,** Criminal Appeal No. 446 of 2016 (unreported). The Court was emphatic in that decision that, notwithstanding the prohibition under section 361(1) of the CPA, an appeal can be entertained by the court where it is plain that the plea was imperfect, ambiguous and unfinished so much so that such a plea cannot be said to constitute an unequivocal plea of guilty from which a valid conviction can be made. The learned Senior State Attorney invited us to hold that the appellant's plea was equivocal which was incapable of grounding convictions. Under the circumstances, Ms. Njiro urged that the appeal was properly before the High Court notwithstanding section 361(1) of the CPA. Going forward, Ms. Njiro invited

the Court to quash conviction, set aside sentence with an order remitting the record to the trial court for retrial.

Upon hearing arguments from Ms. Njiro in support of the appeal and having examined the record, we are constrained to agree with her that, the appellant's plea could not have been a complete and finished plea of guilty warranting conviction. We say so mindful of the criteria for an unequivocal plea of guilty set out in **Lawrence Mpinga v. Republic** [1983] T.L.R. 166; a decision of the High Court quoted with approval by the Court in many of its decisions. Following that decision, it is now settled that an unblemished plea of guilty is free from the following:

1. *that even taking into consideration the admitted facts, the plea was imperfect, ambiguous or unfinished and for that reason, the lower court erred in law in treating it as a plea of guilty;*
2. *that the appellant pleaded guilty as a result of mistake or misapprehension;*
3. *that the charge laid at the appellant's door disclosed no offence known to law; and*
4. *that upon the admitted facts the appellant could not in law have been convicted of the offence charged.*

The above yardsticks are reflected in **Msafiri Mganga v. Republic** (supra) cited by the learned Senior State Attorney amongst others.

Subjecting the above to what transpired before the District Court, it is glaring, as rightly submitted by Ms. Njiro, that the appellant's plea was ambiguous, imperfect and unfinished. If anything, it appears to have been a result of misapprehension of the facts. It is noteworthy that, in **John Faya v. Republic,** Criminal Appeal No. 198 of 2007 (unreported), the Court cited with approval **Rex v. Yonasani Egalu & others** (1942) EACA 65 which laid down an elaborate procedure to be followed in cases where an accused pleads guilty. Such procedure entails the trial court explaining to the accused every constituent of the charge on which he admits and that he fully understands them before a plea of guilty is entered. Like in this appeal, in **Juma Mohamed v. Republic,** Criminal Appeal No. 272 of 2011 (unreported), a similar issue arose for the Court's determination in an appeal challenging conviction on the appellant's plea of guilty. Sustaining the complaint, the Court lucidly stated that, it is not enough for the accused to say that he admits that it is true that he raped the little girl rather, he must mention the name of the victim. Similarly, the Court stated

that the statement. *"I admit the facts as true and correct"* without saying what the accused admitted exactly is not enough to ground conviction on the accused's own plea of guilty, for such a plea is equivalent to an unfinished plea.

As alluded to earlier, when the charge was read over to him, the appellant said; *"it is true, he bored me, he wanted to destroy stuffs."* With respect, that cannot be taken to have constituted admission to the constituent of the offence charged resulting into a plea of guilty. Similarly, admission of the facts as true and that the appellant did have sexual intercourse with him against nature to punish him amounted to an ambiguous and unfinished plea. Had the two court below directed their minds properly to the appellant's responses in the light of **Lawrence Mpinga** (supra), they could not have concurred that the appellant pleaded guilty to the offence charged.

In the upshot, we find merit in the appellant's complaint in ground one conceded by the learned Senior State Attorney. Accordingly, we quash the impugned conviction and set aside the sentence entered by the trial court sustained by the High Court. That done, we order and direct that the

matter be remitted to the trial court for a fresh expedited trial. In the meantime, the appellant shall remain in custody as a remand prisoner awaiting his retrial unless ordered otherwise by the trial court.

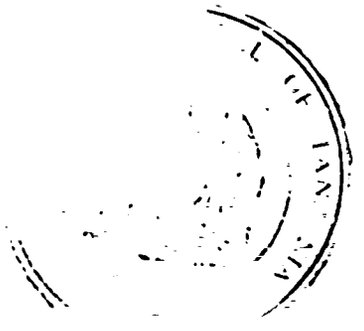
DATED at **MOSHI** this 27th day of September, 2023.

S. E. A. MUGASHA
JUSTICE OF APPEAL

L. J. S. MWANDAMBO
JUSTICE OF APPEAL

I. J. MAIGE
JUSTICE OF APPEAL

The Judgment delivered this 29th day of September, 2023 in the presence of the appellant in person and Ms. Bertina Tarimo, learned State Attorney for the Respondent/Republic, is hereby certified as a true copy of the original.



D. R. LYIMO
DEPUTY REGISTRAR
COURT OF APPEAL