IN THE COURT OF APPEAL OF TANZANIA

AT MTWARA

(CORAM: MKUYE, J.A., MWANDAMBO, J.A. And RUMANYIKA, J.A.)

CRIMINAL APPEAL NO. 552 OF 2021

RAMADHANI BAKARI YUSUPH @ DODO ..... APPELLANT

VERSUS

THE REPUBLIC ..... RESPONDENT

(Appeal from the Decision of the High Court of Tanzania at Mtwara)

(Dyansobera, J.)

dated the 8th day of October, 2021

in

Criminal Appeal No. 111 of 2020

JUDGMENT OF THE COURT

16th March & 5th May, 2023

RUMANYIKA, J.A.:

In Lindi District Court Criminal Case No. 91 of 2020, Ramadhani Bakari Yusuph @ Dododo (the appellant), was convicted on his own plea of guilty of unnatural offence contrary to section 154 (1) (a) and (2) of the Penal Code (the Code) and sentenced to life imprisonment.

It was alleged that in the evening of 17th September, 2020, at Madangwa village in the District and Region of Lindi, the appellant had carnal

knowledge of a three years' old girl. In order to conceal her identity, we shall refer her as "the victim".

On being arraigned in the District Court (the trial court), the appellant pleaded guilty to the offence charged. He was convicted and sentenced to the mandatory life imprisonment. Dissatisfied with the conviction and sentence, he appealed to the High Court (the first appellate court) but lost the war and battle. Still aggrieved, the appellant is before the Court with eight points of grievance, seven in the substantive memorandum of appeal and one in the supplementary memorandum to challenge that decision. The said points could be rephrased as follows:

1. *The first appellate Judge erred in law in not holding that the proceedings at the trial court were irregular and improper.*
2. *The first appellate Judge erred in law and fact in not holding that the appellant's plea of guilty was a result of misapprehension or mistake as he did not understand the nature of the offence charged.*
3. *The first appellate judge erred in law and fact in not holding that the prosecution case was not proved to the required standard.*
4. *The first appellate Judge erred in law and fact in upholding the conviction and sentence without proof of the victim being under age.*

5. *The first appellate Judge erred in law and fact in upholding the conviction and sentence without satisfying himself with the appellant's mental health at that time.*
6. *The first appellate Judge erred in law and fact in upholding conviction based on exhibit P1 (the PF3) whose admission was improper contravening the mandatory provisions of section 210(3) of the C.P.A.*
7. *The first appellate Judge erred in law and fact in upholding conviction without the victim being proved to be a child.*
8. *The first appellate Judge erred in law and fact in upholding conviction and sentence which were founded on equivocal plea of guilty.*

At the hearing of the appeal on 16th March, 2023, the appellant appeared in person without representation whereas, Mr. Joseph Mauggo, learned Senior State Attorney represented the respondent Republic.

At the outset of the hearing, the appellant opted to let Mr. Mauggo to submit first while reserving his right to rejoin, if need be.

Mr. Mauggo opposed the appeal generally contending that, the appellant was convicted on his own unequivocal plea of guilty as was found by the trial court and upheld by the first appellate court. He asserted that, the appellant's plea apart, when presenting his mitigation he regrettably blamed the devil which allegedly tempted and forced him to sexually abuse

the victim, for that reason asked for pardon promising not to repeat it in future. The learned Senior State Attorney was candid that, any appeal against conviction which is based on an unequivocal plea of guilty as here, contravened the provisions of section 360 (1) of the Criminal Procedure Act (the C.P.A) which bars appeals against conviction of such nature. He implored us to dismiss the appeal for being misconceived.

As regards ground numbers 4 and 7 of appeal that, the victim was not proved to be a child and that the production of exhibit P1 (the PF3) was improper, Mr. Mauggo urged the Court to disregard it because, upon the appellant pleading guilty to the offence, any evidence to prove the victim's age and any other documentary evidence to prove the prosecution case was uncalled for. To support his point, he cited our unreported decision in **Onesmo Alex Ngimba v. R,** Criminal Appeal No. 157 of 2019.

Rejoining, the appellant contended that he was wrongly convicted because his plea was equivocal as he made it under undue influence of the police. He, therefore, urged us to allow the appeal and restore his liberty.

We have carefully gone through the record, the appellant's submission in support of the appeal and Mr. Mauggo's submission.

For our consideration the issues arising are two: **one**, whether the appellant's plea to the charged offence was unequivocal to ground conviction, **two**, whether, the sentence of life imprisonment imposed by the trial court on the appellant and upheld by the High Court was illegal.

To answer issue number one above, on the legal effects of equivocality of a plea of guilty, we are guided by the provisions of section 360 (1) of the CPA. It reads as follows:

> *"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 extent or legality of the sentence."*

In order to appreciate the circumstances which led to the impugned conviction and sentence, we are compelled to narrate the story albeit briefly. Upon being arraigned and after reading the charge to him in the trial court the appellant replied: *"Ni kweli nimemfira mtoto huyo kinyume na maumbile yake".* Literally meaning; "It is true that, I had carnal knowledge of the victim

against order of nature". There followed a summary of facts of the case presented and narrated by the learned State Attorney at pages 4-5 of the record of appeal. The said facts could be summarized thus: **one**, that, the appellant picked the victim and carried her away by bicycle promising to buy her some juice thereafter, **two**, that, he did not honor the promise, instead he stopped over at the nearby school's playgrounds where he had carnal knowledge of her against order of nature, **three**, that, as a result of the appellant's act, the victim profusely released stool. The appellant rubbed it off and returned her home. **Four**, that, at home, the victim urinated with difficulties crying due to pains which led her grandmother to doubt and raised concern and upon examining the victim, she noticed that she had been sexually abused against the order of nature. Being questioned, the victim named the appellant to be the responsible wrong doer. **Five**, that, the victim's grandmother reported the appellant to some neighbors who apprehended and handed him to the local Ward Executive Officer, and later to the police. **Six**, that, the victim was issued with a PF3 (exhibit P1) by the police and examined later at the local Mnazi Mmoja Health Centre where it

was established that, the victim had been carnally known against order of nature.

From the record of appeal, it is undeniable fact that, when the charge was read to the appellant he pleaded guilty and the trial court recorded him as such. Upon the trial court reading the charge, the appellant pleaded guilty and was so recorded. Thereafter, the trial learned Resident Magistrate caused the said facts of the case to be read to the appellant to which he admitted one after the other as being true and was so recorded. Then, the court entered an unequivocal plea of guilty against the appellant followed by conviction and sentence as above highlighted. Looking at the above shown series of events, it is clear to us that, the appellant did not rush his pleading just as the trial court did not rush the conviction.

The Court has pronounced itself times without number on what constitutes an equivocal plea of guilty in various decisions including **Abdallah Jumanne Kambangwa v. R**, Criminal Appeal No. 321 of 2017 (unreported) where, with inspiration it referred to a book by B.D. Chipeta, Magistrates Manual, 3rd Edition, 2010 and stated that:

"An equivocal plea simply means an ambiguous or vague plea that is a plea in which it is not clear whether the accused denies or admits the truth of the charge. Pleas in such term as "I admit" "nilikosa" or "that is correct" and the like, though prima facie appear to be pleas of guilty may not necessarily be so. In fact, invariably such pleas are equivocal."

From the above extract, it could be said that, an equivocal plea of guilty is an ambiguous plea which is capable of having more than one interpretation. In **Abdallah Jumanne Kambangwa** (supra), the Court stressed that, before convicting an accused on a plea of guilty, as is the case here, material facts of the case creating the elements of the charged offence have to be read over and, where need arises explained to the accused. Then, the trial court shall invite him to admit the facts narrated by the prosecution or deny them, as the case may be. This is so for the trial court to test and establish the equivocality or otherwise of the accused's plea.

In **Baraka Lazaro v. R,** Criminal Appeal No. 24 of 2016 (unreported), the Court cited **Yonasan Egalu and 3 Others v. Rex** (1942) EACA 65 and held that:

> ***"Where a conviction proceeds on a piea of guilty...it is most desirable not oniy that every constituent of the charge should be explained to the accused, but that he should be required to admit or deny every constituent*** *and that what he says should be recorded in a form which will satisfy an appeal court that he fully understood the charge and pleaded guilty to every element of it unequivocally".* [Emphasis added].

See also: **John Faya v. R**, Criminal Appeal No.198 of 2007 (unreported).

Applying the above stated principle to the present case, as above demonstrated, we are satisfied that the appellant had at his disposal the charge, the particulars of the offence and the set of the material facts of the case narrated to him by the State Attorney. We are also satisfied that, the facts narrated did clearly establish the ingredients of the offence charged. Further, we are satisfied that, the appellant's admission of the facts narrated was genuine and freely made. It amounted to an unequivocal plea of guilty and we find nothing on the record of appeal to suggest exceptions to the test underscored by the High Court in **Laurence Mpinga v. R.** [1983] T.L.R

166 which has been cited with approval in various decisions of the Court. See for instance **Kalos Punda v. R,** Criminal Appeal No. 153 of 2005 and **Ally Shabani @ Swalehe v. R**, Criminal Appeal No. 351 of 2020 (both unreported) barring appeals against conviction on unequivocal plea of guilty. This appeal therefore, is barren of fruits as it contravenes the provisions of section 360 (1) of the CPA. With respect, the appeal is an afterthought and misconceived. Therefore, in that regard we have no basis to fault the first appellate court. Consequently, the 2nd, 5th and 8th grounds in the substantive memorandum of appeal are dismissed.

The foregoing would have been sufficient to dispose the complaint against conviction on the appellant's plea of guilty. However, we feel compelled to address a secondary issue on the prosecution's alleged failure to tender exhibits in support of the facts read after the appellant's plea of guilty to the charge was recorded. Luckily, the Court has pronounced itself in its previous decisions amongst others, in **Onesmo Alex Ngimba** (supra), where it reiterated the legal principle previously stated in **Frank Mlyuka v. R**, Criminal Appeal No. 404 of 2018 (unreported). It held that:

"...tendering of exhibits where conviction is based on a plea of guilty, is not a legal requirement."

From the above legal stance we hasten to hold that, the issue of the prosecution's failure to tender the respective PF3 is, but a misconception of law. The 6th ground of appeal is dismissed.

As such, we wish to stress that, an unequivocal plea of guilty of an accused to any offence known in law, as is the case, is considered to be an echo of guilty-conscious driven forces where he declares in court that, he is the one who committed the offence charged and is ready for the consequences. In this case, by pleading unequivocally guilty to the charge, he, by design shot circuited the intended full trial such that the prosecution no longer had a duty to adduce evidence. Having waived that opportunity therefore, the appellant is estopped from denying the truth of the matter. Therefore, the issues of the prosecution case not being proven beyond reasonable doubt, amongst others to prove that, the victim was under age and the two courts' failure to consider the appellant's mental status at the time of plea taking, should not have been raised. The 1st ground in the supplementary and 3rd, 4th and 7th grounds in the substantive memoranda of appeal are dismissed.

With regard to the sentence, we find that ground to be devoid of merit because the sentence imposed was the minimum provided under section 154 (1) (c) of the Code.

In the result, the appeal is devoid of merit and dismissed in its entirety.

DATED at **DAR ES SALAAM** this 28th day of April, 2023.

R. K. MKUYE
JUSTICE OF APPEAL

L. J. S. MWANDAMBO
JUSTICE OF APPEAL

S. M. RUMANYIKA
JUSTICE OF APPEAL

Judgment delivered this 5th day of May, 2023 via video facility connected from Mtwara High Court in the presence of Mr. Edson Lawrence Mwampili, State Attorney for the Respondent and the Appellant in person is hereby certified as a true copy of the original.

F. A. MTARANIA
DEPUTY REGISTRAR
COURT OF APPEAL