IN THE HIGH COURT OF TANZANIA

AT ARUSHA

CRIMINAL APPEAL NO. 110 OF 2006

(Originating from Babati D/C 26/2001 CR.C)

RAMADHANI HAIMA .....APPELLANT

VERSUS

THE REPUBLIC .....RESPONDENT

JUDGMENT

SAMBO, J.

The appellant in this case, Ramadhani s/o Haima, stood charged with the offence of Unnatural Offence c/s 154 (1) of the Penal Code, CAP.16 of the Laws. The District Court of Babati heard the case, found him guilty, convicted and sentenced him to thirty (30) years of jail imprisonment. Aggrieved by the said conviction and Sentence, he preferred the present appeal raising three grounds as follows:-

1. That, the learned trial magistrate wrongly convicted the appellant on his plea of guilty without considering that the admission of the appellant against the alleged charge was not well metered.
2. That, it was upon the trial court magistrate to have considered if the appellant was mentally fine when admitting the alleged

charge and this ought to have been corroborated by the doctor who was supposed to have examined the appellant before his confession was received by the trial magistrate as an exhibit.

3. That after the appellant admitted the alleged charge as it was read to him, the learned magistrate ought to have given the appellant enough time to refresh his mind. And this could have been done by being given another more adjournment. Therefore the appellant confession ought not to be relied upon.

On the day when this appeal came for hearing, the appellant told the court that during the trial of the case, he did not see the victim who didn't even appear to testify against him. When he wanted to see the complainant, the trial magistrate ordered him to sit down saying that was not a question.

On the other part, the learned state attorney, Mr. Mwamunyange, vehemently opposed the appeal and submitted to the effect that the appellant pleaded guilty to the charge. When the facts of the case were read over to him, he admitted saying they were true and correct, he committed the offence. The learned state attorney revealed that the charge sheet read section 154 (l) of the Penal Code,

without indicating subsection (a), but the particulars of the offence revealed the offence c/s 154 (1) (a) of the Penal Code. Such defect did not occasion injustice. Now that the appellant pleaded guilty, there was no need of summoning the victim to testify. At this juncture, he referred the court to the case of **Laurene Mpinga v.R. [1983] TLR 166,** to prove that an appeal against unequivocal plea of guilty, can not stand. The appellant could only appeal against sentence, and not conviction. He concluded his submissions by stating that the third ground is baseless as the trial magistrate was not obligated to adjourn the case.

Thereupon, I did consider the submissions of both parties and read the proceedings of the trial court. It's clear that the appellant pleaded guilty to the charge when the same was read over and explained to him in the language he did understand. When the public prosecutor, inspector Rogart, read the facts to him, he also admitted that they were correct and confessed to had carnal knowledge of one Eluk s/o Lobulack, against the order of nature. He prayed that the court be lenient on him, and that he would never commit any offence. Thereupon, the trial court convicted him in accordance with the law, and hence the sentence.

The proceedings reveal that the appellant's plea was unequivocal and hence, correctly convicted. The first ground is therefore without merit and is accordingly dismissed.

A careful reading of the proceedings indicates that the appellant did not reveal any sign of being a person of unsound mind, which would have forced the trial magistrate to adopt the proper procedure for persons of that nature. The appellant is and was a person mentally fit when the charge was read over and explained to him. There was no need of referring him to a mental hospital for medical examination. The second ground is again short of merits and accordingly rejected in its totality.

On the third ground, the procedure does not want the trial magistrate to adjourn the case after the appellant had pleaded guilty to the charge in order to give him enough time to refresh his mind. Section 228 (2) of the Criminal Procedure Act, 1985, provide in black and white that:-

> " (2) 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**.....".(emphasis added).

In view of the above quoted statutory provision of the law, it goes without saying that the third ground of appeal is baseless in all aspects. The same is accordingly dismissed.

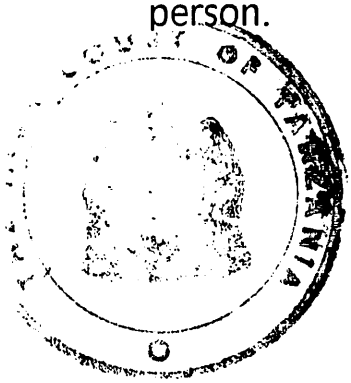
In the final analysis, I am satisfied that this appeal was preferred in the absence of sufficient grounds to convince this honourable court to think of faulting the decision of the lower trial court. I therefore dismiss it in its entirety.

K.M.M. SAMBO

JUDGE

27/4/2009

Delivered in chambers this 29th April, 2009, in the presence of Miss Swai, learned state attorney and the appellant being present in person.



K.M.M. SAMBO

JUDGE

29/4/2009

/mm