IN THE HIGH COURT OF TANZANIA

AT IRINGA

APPELLATE JURISDICTION

(Iringa Registry)

(DC) CRIMINAL APPEAL NO. 12 OF 2007

(Originating from Criminal Case No. 275 of 2000

of the District Court of Iringa District

at Iringa

Before E. K. Mwambeta – D.M.)

MANENO S/O MPOGOLE ..... APPELLANT

VERSUS

THE REPUBLIC..... RESPONDENT

28/4/2014 & 25/7/2014

JUDGEMENT

MADAM SHANGALI, J.

It was back on 8th May, 2000 when the appellant Maneno Mpogole was charged before the District Court of Iringa with a serious offence of rape contrary to Section 130 (1) (2) (e) and 131 (1) of the Penal Code, Cap. 16, R.E. 2002. The appellant was convicted on his own plea of guilty and sentenced to life imprisonment plus twelve (12) strokes of the cane. He was

also ordered to pay a compensation of T.Shs.20,000/= to the victim of the crime.

Being aggrieved by the decision of the trial District Court, the appellant appealed against both conviction and sentence to this court. His appeal (*Hon. Werema, J., as he then was*) was summarily rejected on 18/5/2007.

Undeterred the appellant filed his second appeal to the Court of Appeal of Tanzania to challenge the decision of this court which dismissed his appeal summarily. On 10th December, 2012 the Court of Appeal of Tanzania allowed his appeal, quashed the decision of this court and ordered the appellants appeal to this court to be heard and determined on its merit.

In his Petition of Appeal the appellant has filed five grounds of appeal all circumventing on the issue of equivocality of his plea. The grounds of appeal may therefore be condensed to one main ground that the trial District Court erred in law and fact for convicting and sentencing the appellant on an equivocal plea of guilty.

During the hearing of this appeal the appellant appeared in person and unrepresented while the respondent/Republic was represented by Mr. Mwenyeheri, learned State Attorney.

The appellant adopted his grounds of appeal and contended that he was wrongly convicted and sentenced as his plea was equivocal. He stated that he did not understand the ingredients of the charge laid against him because they were neither explained to him nor properly stated. He complained that being an illiterate and lay person from the village, he was not conversant with Kiswahili language because his main and fluent language is Kihehe. He complained further that when the charge and the facts were read over to him he ignorantly replied in positive without knowing its meaning and the consequences of doing so. He stated that for such a serious offence leading to life imprisonment the trial District Court had a duty to thoroughly explain it to him in his own language before entering a plea of guilty. He categorically denied to have committed the alleged offence and stated that even PF.3 is not a correct document.

Mr. Mwenyeheri countered the appeal and submitted to the effect that the appellant plea was unequivocal because he admitted all the facts read to him. The learned State Attorney conceded that the words "*It is true*" used by the appellant to admit the charge has been misleading to some extent and the courts have been warned not to rely on such words without further explanation as it was stated in the case of **R. Vs. Rajabu Ayubu (1972) HCD 172**. Nonetheless, Mr. Mwenyeheri insisted that the facts in the present case showed that all elements of the offence of rape were stated and the

appellant admitted them including PF.3, exhibit P.1. He also referred to the case of **Yusufu Maumba Vs. R. (1966) E.A. 167** and prayed the appeal to be dismissed because the plea was unequivocal.

Having gone through the record of proceedings of the trial District Court and having heard the submission from both sides, I am settled to go along with the appellant's complaints that his plea was equivocal. I do agree with Mr. Mwenyeheri that sometimes the words '*It is true*' are misleading and that the uncertainty caused by those words are cleared by proper and sufficient facts which discloses all ingredients of the offence. In our present case I am far away from believing that the facts submitted by the prosecution side met that standard. In my view the facts sound unintelligible and wanting to establish the offence of rape.

First of all, the record of proceeding of the trial District Court indicate that the trial was conducted in supersonic speed without considering the ability or position of the accused (*appellant*) to have understood the charge and its ingredients; the seriousness of the charge and its callous sentence and even the age of the accused who was only nighteen years of age hence a need to make sure that he was actually following the trial against him.

The record further reveal that when the charge was read

over to the appellant and having replied "*It is true*", the prosecutor proceeded to submit the facts which, as I have pointed out above did not sufficiently establish the offence of rape. The only sentence referring to the offence state that;

> "*He forcibly carnal knowledge of her after he had threatened to stab her with a knife.*"

In my considered opinion such sweeping statements cannot establish the serious offence of rape. On the same time the PF.3 was produced and admitted casually. That document (*Exhibit P.1*) is totally misleading and dangerous to rely upon. It suggest that the weapon used to inflict bruises injuries was "*Rape*". Furthermore it shows that, it was issued at Lugalo Police Station on 2/5/2000. The facts indicate that the offence was committed on 15/4/2000, and the same PF.3 was filled by unknown person on 15/4/2000. Had the trial District Magistrate took his time and conducted the trial properly he would have question as to why the PF.3 was issued fifteen (*15*) days after the date of incident and yet filled on 15/4/2000.

It has been stated over and again that where a convict is likely to proceed on a plea of guilty the rule in the famous case of Yonasani Egalu ought to be adhered to. (See **R. Vs. M/S.S.P. Construction (1981) TLR**. The rule in **Rex V. Yonasani Egalu & Others (1942) 9 EACA, 65** states as

follows;

> *"In any case in which a conviction is likely to proceed on a plea of guilty it is not desirable not only 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 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."*

The principle is that always the accused person must understand the nature of the case facing him and such can be achieved where a charge and its facts discloses the essential elements of an offence. That position of the law has been reiterated in many cases. In the case of **DPP Vs. Paul Reuben Makujaa (1992) TLR 2**, it was stated that;

> *"Where there is an indication that accused intends to plead guilty, court should take effort to carefully explain to him each and every ingredient of the offence and a plea of guilty should only be entered if his reply to such explanation clearly shows that he understood the nature of the offence and he is without qualification, admitting it..."*

On the foregoing reasons and authorities I m satisfied that this appeal falls under the ambit of special circumstances where an appeal can be entertained from a plea of guilty as stated in the case of **Laurence Mpinga Vs. R. (1983) RLR 166**. Having so entertained it, I am equally satisfied that the appellant's plea was equivocal and bad in law. The appeal is allowed, conviction quashed and the sentence imposed against the appellant set aside.

I have noted that the appellant has been in prison serving his sentence for fourteen (*14*) years now. To be honest, I see no justification to order for a re-trial of the case. I hereby order for the release of the appellant from prison forthwith unless he is lawfully held on a separate matter.

M. S. SHANGALI

JUDGE

25/7/2014

Judgement delivered todate 25th July, 2014 in the presence of Mr. Mwenyeheri, learned State Attorney representing the respondent/Republic and the appellant present in person. Right of appeal explained.

M. S. SHANGALI

JUDGE

25/7/2014