

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(ARUSHA DISTRICT REGISTRY)**

**AT ARUSHA**

**CRIMINAL APPEAL NO. 127 OF 2017**

**PASKALI S/O KAMARA @GARIMA ..... APPELLANT**

**VERUS**

**THE REPUBLIC ..... RESPONDENT**

**MAIGE, J**

**JUDGEMENT**

At the District Court of Longido, the appellant was charged with and convicted of an offense of *Rape* contrary to section 130 (1), (2) and 131 (3) of the Penal Code. The conviction was on account of his own plea of guilty. He was sentenced to life imprisonment. In accordance with the charge sheet and the Facts of the Case, the appellant was accused of raping an infant child of two years. The appellant, it would seem, was aggrieved by both conviction and sentence. He has preferred an appeal to this court on four accounts. First, that the appellant was not tried by a proper court. Two, section 119 (1) of the Child Act was not complied with. Three, section 97 of the Child Act was not complied with. Four, the appellant pleaded guilty as a result of misapprehension.

During the disposal of the appeal, the appellant appeared in person and was not represented. Mr. Hyera, learned state attorney represented the respondent. In his submissions, the appellant adopted the factual deposition in the memorandum of appeal and invited the Court to allow the appeal. On her part, Miss Hyera was of the contention that the appeal had no merit. The first three grounds of appeal are totally irrelevant as the Law of the Child applies to a child of below 18 years while the appellant was, according to the charge sheet, 20 years when he was committing the offense. On the forth ground, she submitted, the proceedings of the **trial court** clearly suggest that the appellant confessed and the confessional was unequivocal.

As pointed out elsewhere in this judgment, the conviction of the appellant at the **trial court** was based on his own plea of guilty. In terms of section 360 (1) of **CPA**, decisions of this nature are generally not appealable. Appeal can only lie as against the extent or legality of the sentence. The rule stated in section 360 (1) of the **CPA**, as I understand, constitutes a general rule which in my opinion is not absolute. As held by the Court of Appeal of Tanzania in RAMADHANI HAIMA VS REPUBLIC, Criminal Appeal No. 213 of 2009 (Unreported), this rule accept some exceptions one of which being that; if the plea was on the face of it so imperfect or ambiguous that a prudent magistrate or judge would have treated it as a plea of not guilty. This position was also stated in LAURANCE MPINGA VS.

REPUBLIC (1983), TLR 166 and ANDREW KITUNDU VS. THE REPUBLIC, Criminal Appeal No. 185/2010, CA Unreported).

The conviction of the appellant at the **trial court** was based on his own plea of guilty. The statement constituting the plea is reflected in page 1 of the proceedings of the **trial court**, which for clarity I will reproduce hereunder.

*" It is true I canal knowledge with Irene d/o Emmanuel. I was caught canal knowledge with Irene Emanuel" (sic)*

With that plea, the trial magistrate entered it as a plea of guilty. He invited the state attorney to read the facts of the case. The narration of the facts are found at page 2 of the proceedings of the **trial court**. On top of that, the state attorney produced into evidence the PF3 (exhibit PE1), caution statement as exhibit **PE 3**. I have read the facts of the case and I am satisfied that they encapsulate all the ingredients of the offence. Besides, the cautioned statement of the appellant in exhibit **PE3** was admmissive of all the ingredients of the offence.

For the foregoing reasons, I entertain no doubt that the plea of confession by the appellant at the **trial court** was unequivocal. The conviction of the appellant on his own plea of guilty therefore was therefore correct and proper.

On the issue of non compliance with the Law of the Child Act, I agree with the learned state attorney that the same has been misconceived. The age of the appellant according to the charge sheet was 20 years old at the time of the commission of the offence. The appellant disclosed a similar age in his cautioned statement (exhibit PE3). His prosecution therefore would have not been conducted under the Law of the Child Act.


In the final result, the appeal is dismissed in its entirety. The conviction and sentence of the trial court is upheld.

Right to appeal is duly explained.

It is so ordered.

  
**MAIGE  
JUDGE**  
**14/11/2018**

Judgment delivered in the presence of the appellant in person and Aziel, learned state attorney this 14<sup>th</sup> day of November 2018.

  
  
**MAIGE  
JUDGE**  
**14/11/2018**