

**IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)**

AT DAR ES SALAAM

CRIMINAL APPEAL NO. 12 OF 2020

*(Arising From Criminal Case No. 164 Of 2019, District Court of Kilosa, Before
Hon. T. Lyon – RM-1 Dated 14th June 2019)*

TUNU PAUL JOHN APPELLANT

VERSUS

REPUBLIC RESPONDENT

Date of Last order: 30/03/2020

Date of Judgement: 18/05/2020

J U D G M E N T

MGONYA, J.

In the District Court of Kilosa, the Appellant **TUNU PAUL JOHN** was arraigned for the offence of **corrupt transaction**, contrary to **section 15 (1) (a) and (2) of the Prevention and Combating of Corruption Act No. 11/2002, Cap. 16 [R.E. 2002]**. When she appeared before the trial court, the charge was read over and particulars of the offence explained to her. The same read:

"On or about 4th March 2019, at Kimamba Health Centre within Kilosa District in Morogoro Region, been employed by

*Kilosa District Council as the nurse of Kimamba Health Centre did corruptly receive the sum of **Ten Thousands Tshs. only (Tsh. 10,000/=)** for herself from one LUCY KANUTI as an inducement in order to give ANNA KANUTI one drip of oxytocin who was about to give birth at Kibamba Health Centre, the matter which is in relation to her Principal affairs."*

Whereas the Appellant pleaded:

"Ni kweli nilipokea pesa hiyo kama kishawishi cha kumpa drip kwa ajili ya kujifungua."

Further the record of the court provides that the Public Prosecutor read the facts of the case and the Appellant had this to say: ***"Ni kweli"***.

The Appellant was accordingly found guilty and convicted on her own plea of guilty. Upon conviction, she was sentenced to pay fine of **Tshs. 500,000/=** or server a term of **three years** imprisonment.

Aggrieved by the trial court decision, Appellant appealed to this court against conviction and sentence. In her Petition of Appeal, the Appellant brought three grounds of appeal as below:

- 1. That, the Trial Magistrate erred in law and facts in convicting the appellant based on ambiguous or equivocal plea of guilty;***
- 2. That, the Trial Magistrate erred in law and facts in convicting the appellant without giving her an opportunity to respond to each and every fact read over to her by the Public Prosecutor; and***
- 3. That, Trial Magistrate erred in law for not taking into account the Appellant's mitigation factors, the fact which lead to excessive sentence of paying the fine at a tune of Tshs. 500,000/=.***

Wherefore, the Appellant prays that an appeal be allowed, the conviction and sentence of the trial Court be quashed and set aside, and further the Appellant be acquitted of the charges against her.

Submitting in support of the 1st and 2nd grounds of appeal, it is the Appellant Counsel's submission that the substance of the charge was to be stated to the accused person by the Court, and further to be asked whether he admits or denies the truth of the charge. Moreover, it is the learned Counsel view that it was prudent that, before accepting the plea of guilty by the accused, the Court be satisfied that the accused's reply is nothing but a clear admission to charge as it was held in the case of **LAURENT**

MPINGA VS. REPUBLIC. (1983) TLR 166; that one can appeal on imperfect or ambiguous plea. On this point, the Appellant's Counsel Mr. Cleoplace James also referred this court to the held in the case of ***MUSA MWAIKUNDA VS. REPUBLIC, (2006) TLR 388,*** that it always required that an accused must know the nature of the case facing him and this can be achieved if the charge discloses the essential elements of the offence charged. The Counsel cemented his assertion by also citing the case of ***KHALID ATHUMAN VS. REPUBLIC (2006) TLR 80,*** that the court should ensure that the accused person really understand the charge.

In submitting further, the Appellant's Counsel emphasized that the words in the record attributed to his client, the Appellant herein, that "**ni kweli nilipokea pesa hiyo kama kishawishi cha kumpa drip kwa ajili ya kujifungua**" are not truly her words as such plea is to be observed careful as it is unusual and unlikely too that an accused person would plead in those words. Mr. James Advocate further reveals that the trial Magistrate was supposed to enter a plea of not guilty before accepting the plea of guilty by the accused. Also, the court was required to be satisfied that the accused's reply is nothing but a clear admission of guilty.

The Counsel did not submit on the 3rd ground of appeal. However, concluding his submission, the learned Counsel prayed this court to allow the appeal, the conviction of sentence be quashed and set aside. Further, the Appellant be acquitted of the charges against her.

Responding to the 1st ground of Appeal, it is the Respondent's Counsel Submission that, the contention that the learned Trial Magistrate erred in law and in facts in convicting the Appellant based on ambiguous or equivocal plea of guilty, is not true.

Referring to the record of the court at pg. 1 of the proceedings, the learned Counsel averred that, it is clear that the Appellant entered unequivocal plea of guilty as she admitted all essential elements of offence after the court read over the charge and explained to the appellant in language understood by her as she admitted the offence by saying that: **"Ni kweli nilipokea pesa hiyo kama kishawishi cha kumpa drip kwa ajili ya kujifungulia"**.

It is the Counsel for the Respondent opinion that the above stated words **does** amount to essential element of corrupt transaction as provided under section **15(1)(a)** of **the Preventing and Combating of Corruption Act, 2007 (act**

No. 7 2007) to involve obtaining from any person for himself any advantage as an inducement.

Further, that the Appellant's assertion under the circumstances has to be regarded as baseless since the procedure requires the Magistrate to record what the accused has said; as provided in the case of ***HYASINI NCHIMBI VERSUS THE REPUBLIC Criminal Appeal No. 109 of 2017 (Unreported)*** at pg 8 were it cited the case of ***KHALID ATHUMAN VERSUS REPUBLIC CRIMINAL APPEAL NO. 103 of 2005 (Unreported)*** where it was held:

"..... if the accused then admits all those essential elements, the Magistrate should record what the accused has said as nearly as possible in his own words and then formerly enter a plea of guilty."

The Counsel for the Respondent submitted that, similarly in appeal at hand, it is the Respondent's observation that the Appellant did admit all essential element which amount to the offence charged of corrupt transaction. In which Magistrate recorded what the accused has said as procedure requires. Hence the plea of guilty entered was unequivocal plea of guilty.

On the 2nd ground of Appeal, it is the Respondent Counsel's submission that the procedure stated by the Appellant given under **section 192 of the Criminal Procedure Act. Cap. 20**

[R. E. 2002] is used when the Accused plead not guilty. The learned Counsel submitted that, the distinction was stated in the case of ***HYASINI NCHIMBI (Supra)*** at page. 7 giving the difference between the procedure under section **228 of the Criminal Procedure Act**, where the court *inter alia* stated that:

"The fact that are adduced under section 228 of the CPA are not by any means in a form of Memorandum that are the mere facts supporting the charge. The alert provision applies during the preliminary hearing when the accused has pleaded not guilty."

In the event therefore, it is the Republic's prayer that the instant appeal be dismissed for the same being devoid of merits.

I have gone through the trial court's records and came with two issues before this appeal. First is whether in the circumstances of this case the Appellant's plea can be said to have been equivocal; and second as to whether the Appellant fully understood the charge that was laid against her and intended to plead guilty thereto?

To determine the above issues, it is my opinion that, before entering a conviction, a trial court had to ensure that an accused person has fully understood and appreciated the charge that is laid against him / her and intends to plead guilty thereto. From

the records, I am satisfied that the Appellant was full aware of the facts of the case and since she didn't want to waste any more time of the court and that of other stakeholders to the case, she decided to tell the truth hence her own plea of guilty. It is my settled observation that the Appellant fully understood the facts of the case that is why she didn't only tell the court that she is / not admitting the offence, but she was very elaborative to the extent of saying that:

“Ni kweii nilipokea pesa hiyo kama kishawishi cha kumpa drip kwa ajili ya kujifungulia”.

The above words shows that the Appellant fully understood the facts to the case. To this end, I am fully satisfied that there is nothing upon record indicative of an imperfect, ambiguous or unfinished plea. Likewise, there were no any technical words to the charge which were used by the court in trial. This is because; the proceedings in the District Courts are conducted in **Kiswahili**, the Language that is well known to both to the court and Appellant. Therefore, it cannot be claimed that the plea resulted from a technical words as purported by the Appellant.

At the same time, the Appellant's claim is that she was not given an opportunity to respond to each and every facts read over to her by the Prosecutor. It is my settled view that the said

procedure can only be conducted to the person who pleaded not guilty as well elaborated by the Respondent's Counsel above.

On the other hand, on the allegation that the Appellant was not given an opportunity too to respond to the cautioned statement, it is my firm view that the said cautioned statement was wrongly admitted under the given circumstances as the Appellant had already plead guilty. Further, the same was not used for conviction neither occasioned any injustice to the Appellant.

It is the law under **Section 360 of the Criminal Procedure Act, Cap 20 [R.E 2002]** that, no appeal lies on a plea of guilty save for sentence only. I quote:

S. 360 (1)

"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 of legality of the sentence"

From the conditions of **section 360(1) of the CPA** it is not proper to the Appellant to challenge her own plea of guilty. The Appellant having pleaded guilty to the charge, she only had a right to appeal against sentence. Further, from that stand; I agree with the learned State Attorney that, **all three grounds of**

appeal raised by the Appellant in his Petition of Appeal has no base neither merit to challenge her conviction out of her own plea of guilty.

From the above explanation, **I proceed to dismiss the appeal for the same being meritless.**

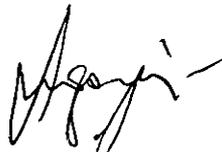
It is so ordered.

Right of Appeal Explained.



L. E. MGONYA
JUDGE
18/05/2015

Court: Judgment Delivered under my hand and seal of the court. This 18/05/2020 in Chambers. In the presence of Ms. Janet Magoho State Attorney and Ms. Sheila Julius Advocate, holding brief for Adv. Cleoplace James for the Appellant; and Ms. Janet RMA.



L. E. MGONYA
JUDGE
18/05/2015