

**IN THE HIGH COURT OF TANZANIA**

**IN THE DISTRICT REGISTRY**

**AT DAR ES SALAAM**

**CRIMINAL APPEAL No. 97 OF 2020**

*(Arising from the Judgment of the District Court of Kilosa at Morogoro in Criminal Case No. 217 of 2019)*

**PHILIPO FAUSTINE @CHITEMBELDE.....APPELLANT**

Versus

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

**JUDGEMENT**

10<sup>th</sup> August – 26<sup>th</sup> October, 2020

**J. A DE-MELLO, J;**

This Appeal arises from the decision of the **District Court of Kilosa in Morogoro**, in which the Trial Court convicted and, sentenced the Appellant for two counts namely; **Rape** contrary to **section 131** and, **Impregnating a school girl** contrary to **section 60** both under the **Penal Code, Cap. 16 R.E 2002**, and, **Education Act Cap. 353 R.E 2002** as amended by **Written Laws Act No. 2 of 2016**. Record indicates no judgment was fully composed following the Appellant **PLEA OF GUILTY**.

Aggrieved, he is now before this Court, with the following grounds:-

- 1. That, your Honorable Judge the lerned Magistrate grossly erred in convicting the appellant in a trial un procedural conducted.**

2. **That, the learned trial Magistrate erred in holding that the Appellant plea was unequivocal where he was not warned of the consequences.**
3. **That, the learned Magistrate erred in convicting the Appellant where all ingredients of the offence was established.**

It is therefore his prayer that, the Appeal be allowed, as the conviction is quashed sentence set aside for his freedom. A Court of Appeal authority has been submitted that, of **Rashidi Nzovu vs. Republic, Criminal Appeal No. 545 of 2016**. On the **10<sup>th</sup> of August** both the Appellant and the Respondent were in Court in which the Appeal was heard with State **Counsel Ndakidemi Monica** of a firm position challenging while opposing the Appeal. Being lay and unrepresented, the Appellant prayed to hear from the Republic first, as he ultimately respond towards his Appeal, later. It is **Counsel Ndakidemi** submissions that, the Appellant at his own volition and, without influence pleaded guilty to the second count that of impregnating a school girl. The language used in as far as record is concerned was quite simple and, friendly, for the Appellant to understand and respond, as he did. Particulars of offence as seen from **page 2** of the proceedings similarly, reveals admission of **PF3** as well as caution statement admitted un-objected. The case of **Nzovu vs. Republic (supra)** was cited in confirming the **PLEA** to be **unequivocal**. That, with this only count, the **Education Act** under its **section 60A** attracts a sentence of thirty years. The Appeal is an afterthought and, thus baseless, she concluded and, praying for its dismissal.

Having heard the State Counsel's submissions, the Appellant vehemently and categorically refuted to have pleaded guilty to the second count. He claims not to understand what transpired as the language used was not familiar.

I need not waste the Court's valuable and limited time as perusal from **4 pages** proceedings has it clear of what transpired from the **29<sup>th</sup> of July, 2019 up to 31<sup>st</sup> of July, 2019** when the matter was heard. To condense the fact that the charges were adequately read over to the accused/appellant is his response as PLEA stating; **Sio kweli** for the 1<sup>st</sup> Count but, **Ni kweli nilimpa mimba** as seen in **page 1** for the second, on **page 1 & 2** respectively. Having admitted, the Trial Magistrate found it sufficient to convict and, sentence the Appellant on that count, the one for **impregnating a school girl** for thirty years (30) as provided by the law. That is from what the **Education Act Cap. 353** stipulates.

With the above. I am afraid that the Appellant and as observed, in an attempt to escape by way of an afterthought. I find no fault in the Trial Magistrate proceedings and decision. I uphold the same, as I dismiss the Appeal.

Accordingly ordered.



**J. A DE-MELLO**

**JUDGE**

**26<sup>th</sup> October, 2020**