

IN THE HIGH COURT OF TANZANIA

AT MWANZA

(IN THE DISTRICT REGISTRY)

HC.CRIMINAL APPEAL NO. 170 OF 2020

*(Appeal emanated from the District Court of Geita at Geita in Criminal Case
No.385 of 2019)*

MAGINA S/O SHITOBELLO @ SHITEBELO APPELLANT

VERSUS

THE REPUBLIC RESPONDENT

JUDGMENT

Date of last order: 20.11.2020

Date of Judgment: 20.11.2020

A.Z. MGEYEKWA, J

The appellant, MAGINA S/O SHITOBELLO @ SHITEBELO was convicted on his own plea of guilty in Criminal Case No.30 of 2020 in the District Court of Geita. The appellant stand charged with an offence

of rape contrary to section 130 (1) (2) (e) and 131 (3) of the Penal Code Cap.16 [R.E 2019].

The trial Magistrate was satisfied that the plea of the appellant was unequivocal and that the facts constitute the offence as charged. He was convicted on his own plea of guilty and for the offence he was sentenced to serve thirty years imprisonment. Dissatisfied the appellant opted to file the instant appeal.

The appellant has raised four grounds of appeal in his petition of appeal as follows:-

- 1. That, the trial court overlooked and carelessly determined the plea of guilty which was /is purely IMPERFECT and EQUITOCAL.*
- 2. That, Both the charge sheet and the alleged admitted facts were not read over into appellants comes ant courage and/ or belong explained to him as per court record his own which not nearly recorded to reflects his own word he uses when pled to the charge/facts carefully.*
- 3. That, the trial court erred in law in convicting the appellant without carefully determining the plea of guilty with the supportive evidence in sustain the alleged plead facts and charges thus PERFUNCTIRILY process.*

4. *That, the charge/pleaded charge, admitted facts conviction and sentence at the provision of the thus led to violative of the appellant's basic rights at every stage of the case.*
5. *That, the manner in which the supported charge and facts were wrongly recorded in violated of the mandatory provision under section 210 (1) of the CPA Cap.20.*

When the matter was called upon for hearing, the appellant appeared in person unrepresented; whereas the respondent Republic was represented by Ms. Gisela Alex, learned State Attorney who supported the appeal.

The appellant had not much he said that he prays this court to adopt his grounds of appeal.

On his part, Ms. Gisela supported the appeal because the plea was unequivocal for the main reason that the facts were read over but the appellant was not asked if he admits the facts or not. Ms. Gisela went on to state that the prosecution proceeded to tender exhibits and the appellant did not object.

It was Ms. Gisela further submission that the omission of not recording the admission of facts that constituted the ingredients of the offence caused injustice to the appellant. Ms. Gisela fortified her submission by referring this court to the case of **Clement Pancras v Republic**, Criminal Appeal No. 321 of 2013.

The learned State Attorney did not end there, she stated that after the charge was read over the appellant said it is true. She added that the trial court was required to record the exact words used to enter his plea. To support her submission by referring this court to the case of **John Faya v Republic**, Criminal Appeal No. 198 of 2017.

In conclusion, the learned State Attorney stated that the appellant's plea was equivocal. Therefore she urged this court to quash the proceedings and order retrial under section 388 of the Criminal Procedure Act, Cap.20 [R.E 2019] to allow parties to be heard on merit.

I order to appreciate the points I will canvas hereunder I take the liberty to reproduce the proceedings and find out what transpired in the District Court of Geita on 21st November, 2019 when the charge

was read over and explained to the appellant who was asked to plead. Thereto. The appellant pleaded as follows:-

Accused: It is true

The trial District Resident Magistrate entered a plea of guilty to the charge. Thereafter the prosecution read over the facts and the appellant admitted the facts as correct. The original record specifically on page 2 of the trial court proceedings shows that the trial Magistrate proceeded to admit the exhibits and then entered conviction against the appellant.

Then the prosecution read over the facts of the case and the trial court proceeded to admit the exhibits. However, as pointed out by the learned State Attorney that the trial court entered into an error because the prosecution was supposed to ask the appellant if he admits the facts or not but the prosecution proceeded to tender exhibits and the appellant did not object. I am in accord with Ms. Gisela submission that the omission for not recording the admission of facts that constituted the ingredients of the offence caused injustice to the appellant. Therefore, the same renders the plea equivocal.

Additionally, having closely examined the record, I have found that the expression, "It is true" used by the appellant after the charge was read to him was insufficient for the trial court to have been unambiguously informed the appellant's clear admission of the truth of its contents. In the circumstances arising, it is doubtful whether that expression by itself, without any further elaboration by the appellant constituted a cogent admission of the truth of the charge.

It is trite law that a plea of guilty involves an admission by an accused person of all the necessary legal ingredients of the offence charged. Consequently, for a plea to be equivocal the accused must add to the plea of guilty a qualification which, if true, may show that he is not guilty of the offence charged, as it was observed in the case of **Foster (Haulage) Ltd v Roberts** [1978] 2 All ER 751. Also, in the case of Safari **Deemay's v R** Criminal Appeal No, 269 of 2011 (unreported) the Court of Appeal of Tanzania held that:-

*"Great care must be exercised, especially where an accused is faced with a grave offence like the one at hand which attracted life imprisonment. **We are also of the settled view that it would be more ideal for an appellant who has pleaded guilty to say more than just, "it is true". A trial court***

should ask an accused to elaborate, in his own words as to what he is saying "is true". [Emphasis added].

Guided by the above authorities, the mere words "It is true" were hardly sufficient to have conclusively assured the trial court of admission of the truth of the charge in terms of the requirement of section 228 (2) of the Criminal Procedure Act, Cap. 20 [R.E 2019].

Now where the court is satisfied that the conviction was based on an equivocal plea, the court may order retrial as held in the case of **Baraka Lazaro v Republic** Criminal Appeal No. 24 of 2016 CAT Bukoba (unreported) and B.D Chipeta (as he then was) in his book Magistrate Manual stated at page 31 that:-

" Where a magistrate wrongly holds an ambiguous or equivocal plea or as it is sometimes called an imperfect or unfinished plea, to amount to a plea of guilty and so convict the accused thereon on appeal the conviction will almost certainly be quashed and in a proper case, a retrial will be ordered usually before another magistrate of competent jurisdiction."

For those reasons, therefore, having found the original trial was defective since the accused plea was equivocal, I hereby allow the

appeal. In the end, I nullify the whole proceedings with respect to Criminal Case No. 385 of 2019, I quash the conviction on the purported plea of guilty, and set aside the sentence. I order that the case be remitted to the trial court for the appellant to plea afresh and the matter to proceed in accordance with the law. I direct, the matter the case scheduling for trial be given priority, hearing to end within six months, and in the interest of justice, the period that the appellants' have so far served in prison should be taken into account. The appellant shall in the meantime, remain in custody to await his trial.

Order accordingly.

DATED at Mwanza this 20th November, 2020.


A.Z MGEYEKWA

JUDGE

20.11.2020

Judgment delivered on 20th November, 2020 in the presence of the appellant and Ms. Gisela Alex, the learned State Attorney.




A.Z MGEYEKWA

JUDGE

20.11.2020