

**IN THE HIGH COURT OF TANZANIA
AT MWANZA**

(IN THE DISTRICT REGISTRY)

HC.CRIMINAL APPEAL NO. 63 OF 2020

*(Appeal emanated from the District Court of Misungwi at Misungwi in Criminal
Case No.30 of 2020)*

VENISTE S/O NIYONDANYI NESTORY..... APPELLANT

VERSUS

THE REPUBLIC RESPONDENT

JUDGMENT

Last order: 21.05.2020

Judgment date: 22.05.2020

A.Z. MGEYEKWA, J

The appellant, VENISTE S/O NIYONDANI NESTORY was convicted on his own plea of guilty in Criminal Case No.30 of 2020 in the District Court of Misungwi. The appellant stand charged with one offence; impregnating a secondary school girl contrary to section 60A (3) of Education Act Cap.353 [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.

At the hearing, the appellant appeared in person unrepresented; whereas the respondent Republic was represented by Mr. Ndamgoba, learned Principal State Attorney who resisted the appeal.

The appellant has raised five grounds in his petition of appeal which can be summarized as follows:-

1. *That; the trial magistrate had gravely erred in law and procedure to base the conviction to the appellant relied on an EQUIVOCAL plea of guilty.*
2. *That; the trial Magistrate grossly and incurably erred in law and procedure to convict the appellant based on the plea as entered i.e "it is true" which was imperfect, ambiguous, and unfinished.*
3. *That; neither the proceeding nor the memorandum of facts disclosed vividly the specific offence, section law, and the intent which the appellant charged/convicted and sentenced with.*
4. *That; the trial magistrate erred in law in convicting the appellant relying on his own plea of guilty while the pleaded*

guilty of the appellant was as a result of a mistake or misapprehension.

5. *That; the so called plea of guilty was pre-functionally taken by the trial court and the appellant was deprived an opportunity to plea after each of the memorandum of facts read out by the prosecutor.*

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

On his part, Mr. Ndamgoba supported the appeal because the plea was unequivocal for the main reason after reading the facts. The appellant admitted and signed. He went on to submit that however, there is a contradiction on the last page of trial proceedings whereas, the trial court recorded the memorandum of undisputed matters and recorded that the appellant did not admit his name, age, occupation, and residence, hence this contradiction goes to the root of the case whereas the plea was unequivocal.

He further added that on page 2 of the trial court proceedings the trial court conducted two preliminary hearing. Elaborating, he submitted that if an accused admits to having committed the offence then what follows is not to prepare a preliminary hearing but to read facts which will show the ingredients of offence. He further submitted that for that reason the appellant plea is therefore equivocal and they pray the court to quash the trial proceeding and condition and to set aside the sentence.

The appellant had not much to rejoin and said that he had spent many years in imprisonment thus he prays this court to set him free.

I find it appropriate to travel through the record and see what transpired in the District Court of Misungwi. On the 4th March, 2020 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. The appellant furthermore accepted the facts as correct. The original record shows that the trial Magistrate then found the appellant guilty and accordingly convicted him as charged.

In the instant case, the appellant was convicted on his own unequivocal plea of guilty and he cannot complain about the conviction. However, on the other hand, considering the plea as such, the court may find the plea was ambiguous or that it was taken under mistake or misapprehension and if either of these circumstances had been revealed, the Court may allow on appeal the accused to challenge the conviction on a plea of guilty.

From above, the crux of the matter in this appeal is whether the facts disclose the offence with which the appellant was charged. The

appellant was charged contrary to section 60 A (3) of the Education Act, Cap. 353 [R.E 2002] as amended by Act No.2 of 2016. The facts of the case were read over.

The issue for determination is whether the plea of guilty was unequivocal.

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].

I have further perused the court records and found that thereafter the facts were read over and the appellant accepted that all facts are true as read to in Kiswahili. Then trial court proceeded to record the memorandum of undisputed matters thereafter convicted the appellant. I am in accord with the learned Principal State Attorney that the trial court went into error, for conducting a second preliminary hearing while the appellant had pleaded guilty. Thus, the plea was equivocal.

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.30 of 2020, 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 one year, 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 21st May, 2020.


A.Z Mgeyeka

JUDGE

21.05.2020

Judgment delivered on 21st May, 2020 via audio teleconference, and the appellant and Mr. Ndamugoba, learned Principal State Attorney were remotely present.


A.Z Mgeyeka

JUDGE

21.05.2020

