

IN THE HIGH COURT OF TANZANIA

(IN THE DISTRICT REGISTRY)

AT MWANZA

HC.CRIMINAL APPEAL NO. 43 of 2020

*(Originating from the Judgment of the District Court of Sengerema, In Criminal Case
No.20 Of 2020)*

MZIBA MATONDANE APPELLANT

VERSUS

THE REPUBLIC RESPONDENT

JUDGMENT

Last order: 21.04.2020

Judgment date: 27.04.2020

A.Z. MGEYEKWA, J

The appellant, MZIBA MATONDANE was convicted on his own plea of guilty in Criminal Case No. 20 of 2020 in the District Court of Sengerema. The appellant stands charged with the offence of impregnating a school girl C/s 60A (3) of Education Act No. 2 Cap 353 of 2016 . The prosecution on an unknown date of December 2019 at about 17:00 hrs at Nyakatala village within Sengerema District in Mwanza Region the accused person did impregnate a school girl named SUZANA D/O MATHAYO a girl of 17 years

student at Ng'weli Secondary School a result she failed to proceed with Secondary Education.

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 Ms. Magreth, learned State Attorney who resisted the appeal.

The appellant has raised four grounds in his petition of appeal which can be summarized as follows; **One**, the trial court erred in law and fact by depriving the appellant an opportunity to plea on the facts as laid down by the prosecutor. **Two**, that considering the alleged plea of guilt was ambiguous, imperfect, and unfinished, so the trial court erred in law and facts to treat it as a plea of guilt. **Three**, the trial court erred in law and facts to rely on the prosecution's exhibits regardless of its procedural admission into evidence that is the alleged confession was not loudly read out. **Four**, the alleged plea of guilt was EQUIVOCAL, so the trial court had erroneously based on it to warrant the appellant's conviction and sentence.

The appellant had not much he said that he has filed his grounds of appeal and he has no additional grounds.

Ms. Magreth supported the conviction and sentence. Arguing for the first ground of appeal, she referred this court to page 3 of the court proceeding that the court gave him the opportunity to plea and the appellant had no objection, thus this ground is disregarded.

Submitting on the second and fourth grounds of appeal, she said that the charge was read over and the accused admitted stating *"Ni kweli nilimpa mimba mwanafunzi"* which means that the appellant understood the chargers. Thus the appellant appeal is demerit and he was not supposed to file an appeal at the first place because the law clearly states that there is no appeal against unequivocal plea as stipulated under section 361 of Criminal Procedure Act, Cap.20 [R.E 2019].

As to the third ground of appeal, the learned State Attorney refuted that the exhibits were un-procedural admitted, she stated that tendering of PF3 is not a mandatory requirement and, the trial Magistrate did not rely on the said PF3 in entering conviction against the appellant. She went on to submit that even if the documents could have been expunged, the evidence on record suffices to convict the appellant.

In conclusion, Ms. Magreth urged this court to find that the appellant was rightly convicted and sentenced.

I have found that the facts were read over to the appellant and records show that the appellant admitted the facts that they are true. The same is produced hereunder:-

Accused: *"Ni kweli nilimpa mimba mwanafunzi"*

Thereafter both parties appended their signatures.

COURT: Entered as a plea of guilty to a charge.

Then, the Public Prosecutor read over the facts of the case and both parties appended their signatures.

The Public Prosecutor tendered a PF3 and confession statement of the accused person.

COURT: asked the accused if he had any objection to the exhibits and evidence of facts.

Accused: No objection to the exhibits and facts.

Thereafter both parties appended their signatures.

Thereafter, the trial Magistrate proceeded to convict the appellant on its own plea of guilty and sentenced him for thirty years imprisonment. Like any other documentary evidence, whenever it is intended to be introduced in the evidence must be initially cleared for admission and then actually admitted before it can be read out. In my view, the court went into error, for not reading over the same, the court had to read over to him so as to let him be ascertained with the content of the confession statement and PF3. This was stated in the case of **Walii Abdallah Kibutwa & 2 Others v R**, Criminal Appeal No. 181 of 2006 and also in the case of **Omari Iddi Mbezi v Republic**, Criminal Appeal No. 227 of 2009 (both unreported). In the trial under scrutiny, on page 3 of the trial court proceedings, the court stated as hereunder:-

COURT: Exhibits admitted that is PF3 of the victim and confession statement.

It is evidently shown that the PF3 and confession statement of the appellant upon admission as exhibits were not read over to the appellant and the same were not even marked as exhibits as required by the law thus the same is a fatal irregularity.

It is trite law that 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 for the main reason that the accused plea was equivocal, I hereby allow the appeal. In the end, I nullify the whole proceedings concerning Criminal Case 20 of 2020, I quash the conviction on the purported plea of guilty, and set aside the sentence. I order 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 appellant has 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 27th April, 2020.


A.Z MGEYEKWA

JUDGE

27.04.2020

Judgment delivered on 27th April, 2020 through audio teleconference and both parties were remotely present.




A.Z MGEYEKWA

JUDGE

27.04.2020