

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE DISTRICT REGISTRY OF KIGOMA)

AT KIGOMA

(APPELLATE JURISDICTION)

(DC) CRIMINAL APPEAL NO. 3 OF 2021

(Original Criminal Case No. 121/2020 of the Kigoma District Court, before Hon. K.V. Mwakitalu - RM)

MATESO S/O HERIAPPELLANT

VERSUS

REPUBLIC..... RESPONDENT

J U D G M E N T

17th & 17th February, 2021

I.C. MUGETA, J.

The appellant was convicted of attempted rape contrary to section on 132 (1) (2) (a) of the Penal Code on allegation that he attempted to rape AB (the victim initials from first letters of her names). He pleaded guilty, hence, the conviction and sentence to thirty years jail imprisonment. He has appealed on the grounds that: -

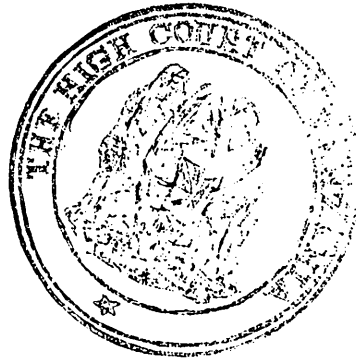
- i. That, the trial resident magistrate erred in law and in fact on convicting the appellant relying on equivocal plea of guilty which resulted from a mistake or misapprehension.*

- ii. That, the trial resident magistrate erred in law and fact in failure to take into consideration the facts, the appellant plea was imperfect, ambiguous and unfinished.*
- iii. That, the entire proceeding was marred by the procedural irregularities fatal. Hence, there is miscarriage of justice.*

When he appeared for hearing of the appeal, he failed to say anything useful to advance his grounds of complaint. On the face of it he appeared to be mentally unstable to the extent that even after some inquiring there was nothing useful from him. I record that the appellant has mental health challenges and requested Edna Makala, learned State Attorney, who appeared for the Republic to address me on that issue. She conceded that the appellant has a mental case which means he was not able to follow the proceedings at the trial court, therefore, his plea of guilty is equivocal. She suggested that the trial court ought to have dealt with him as a person with mental disability.

I agree with the learned State Attorney. From the appellant's mental state, the trial court ought to have noticed his mental instability and dealt with him as described under sections 219, 220 and 221, as the case may be. On the foregoing, I quash the conviction and set aside the sentence. I order for a

retrial upon establishing whether the appellant is a mental disordered offender.



I.C. Mugeta
I.C. Mugeta

Judge

17/3/2021

Court: Judgment delivered in chambers in the presence of the appellant and Edna Makalla, State Attorney for the respondent.

Sgd: I.C. Mugeta

Judge

17/3/2021