IN THE HIGH COURT OF TANZANIA

(DODOMA DISTRICT REGISTRY)

AT DODOMA

CRIMINAL APPEAL NO. 176 OF 2020

(Arising from the Decision of District Court of Bahi in Criminal Case No. 65 of 2020)

JUMA BLEZI MATEBANO ..... APPELLANT

VERSUS

THE REPUBLIC ..... RESPONDENT

JUDGMENT

13th April, 2021 & 13th April, 2021

M.M. SIYANI, J.

When the instant appeal came for hearing, Ms Neema Taji, the learned State Attorney representing the Respondent Republic, raised the attention of the court that proceedings of a case which is a subject of the instant appeal, is marred by procedural irregularity which goes to its roots. She therefore invited the Court to consider the same before going to the merits of the appeal. Given a chance to address the Court, Ms Taji argued that, the

appellant was convicted by the District Court of Bahi at Bahi in Criminal Case No. 65 of 2020 following his own plea of guilty to charges of Rape and Impregnating a school girl contrary to section 130 (1) (2) (e) and 131 (1) of Penal Code Cap. 16 RE 2002 and 60 A (3) of the National Education Act Cap 353 RE 2002, respectively.

According to the learned State Attorney, having recorded his plea in those two counts, the appellant was then inquired as to the facts before the same were read to him where he went on to admit the same. In Ms Taji's views, that was improper because the facts ought to have first been read over to the appellant before inviting him to respond. Ms Taji then urged the court to find the irregularity as fatal. She consequently moved the court to invoke its revision powers by quashing the proceedings, set aside both the conviction and sentence and order its retrial.

On his part, the appellant who was in person and unrepresented, had nothing useful to submit, presumably owing the fact that being a lay person he was not acquainted with knowledge to such technicalities of the law. The procedure to be adopted by a court once an accused before it has pleaded

guilty to a charged offence, was laid down by the then East African Court of Appeal in **Adan Vs Republic** (1973) EA 445, which was cited with approval by the Court of Appeal of Tanzania in **Khalid Athuman Vs Republic** (2006) TLR 79 where the Court observed the following at page 446:

> ***When a person is charged, the charge and the particulars should be read out to him, so far as possible in his own language, but if that is not possible, then in a language which he can speak and understand. The Magistrate should then explain to the accused person all the essential ingredients of the offence charged. If the accused admits all those essential elements, the magistrate should record what the accused has said, as nearly as possible in his own words and then formally enter a plea of guilty, the magistrate should next ask the prosecutor to state the facts of the alleged offence and when the statement is complete, should give the accused an opportunity to dispute of explain the facts or to add any relevant facts.***

What can be glanced from the above decision is that after recording the plea of guilty, the court should invite the prosecutor to read the facts of the case and then accord the accused person a chance to respond to the facts. If in his reply, he denies any or all of the essential facts, then a plea of not guilty must be entered. Courts of law are enjoined to ensure that an accused

person is convicted on his own plea of guilty, where it is certain that he or she understands the charge that has been laid at his/her door and that the same discloses an offence known under the law.

Having stated the position of the law with regard to a proper procedure to be followed once an accused person pleads guilty to a charged offence, I agree with Ms Taji's arguments that there was a flawed procedure in the instant matter. As correctly submitted, having recorded the appellant's plea of guilty, the trial court adopted as part of the proceedings, what appears to be typed facts presented by the prosecution. What followed thereafter was the appellant's reply in which it was recorded that he admitted all the facts. The court then recorded that the accused (appellant) admitted the typed facts narrated to him. For reference purposes the following is what transpired at the trial court after the appellant's plea:

***COURT:** Enter a plea of guilty.*
SGD
S.M Mwalilino-RM
30/7/2020
PP: Investigation is complete, I pray to proceed with facts.
Accused: I have no objection.
COURT: FACTS OF THE CASE.

PP: I pray to the court to adopt the typed facts of the case to form part of the proceedings.
<u>COURT:</u> Typed facts of the case are adopted to form part of the proceedings.

SGD
S.M Mwalilino-RM
30/7/2020

<u>ACCUSED:</u>
I admit the facts of paragraph No. 1, 2, 3, 4, 5, 6 and 7
<u>COURT:</u> Memorandum of facts of the case of the accused person.
That the accused person admitted all the facts narrated to him as per paragraph, No. 1, 2, 3, 4, 5, 6 and 7 of the typed facts.

SGD
S.M Mwalilino-RM
30/7/2020

<u>COURT:</u> Memorandum of facts of the case are read and explained to the accused person in a language that the accused person understood that is Kiswahili.

SGD
S.M Mwalilino-RM
30/7/2020

As the record above reveals, the appellant was asked to respond to the facts before the same were read over to him. That, as correctly submitted by Ms Taji was a procedural irregularity which touches the roots of the case because in a normal cause of event, no one can respond to facts not known to him. By inquiring the appellant to respond to facts before the same were read out to him, the court denied him an opportunity to understand the

details of his charges and to that extent, he was prejudiced. As it was observed in **Adan Vs Republic** (supra) the narration of the facts should have preceded his reply.

In the circumstances, I agree with Ms Taji that such an irregularity is fatal. I therefore invoke the revision power of this Court under the provisions of section 173 (1) (a) of the Criminal Procedure Act Cap 20 RE 2019 by quashing the proceedings of the trial court and set aside both the conviction and sentence meted to the appellant in both counts and order the file to be remitted to the trial court for an expediated fresh trial before another magistrate of competent jurisdiction. It is further ordered that should the new trial lead to the conviction, the time the appellant has spent in prison serving the current sentence, should be taken into account when passing the sentence. Considering the nature of the case, I direct that the appellant, should be remanded in custody until when taken to the trial court where his right to bail will be considered. It is so ordered.

DATED at **DODOMA** this 13th day of April, 2021

M.M. SIYANI

JUDGE