

IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA

TANGA DISTRICT REGISTRY

AT TANGA

CRIMINAL REVISION NO. 6 OF 2020

1. HELINA MKASHA @ KILONZO

2. RAHEL KATAMBO

3. PENINA CHARLES

4. MUSSA CHARLES KATAMBO @MASIKU

5. MAGRETH DAUD

} **ACCUSED**

VERSUS

THE REPUBLIC.....PROSECUTION

RULING

MRUMA, J.

Section 44 (1) (a) of the Magistrate Courts Act [Cap 11 R.E. 2019] vests general powers of supervision on this court over all district courts and courts of Resident Magistrate. Under those powers, the High Court may call for and examine records of any proceedings before any subordinate court for purposes of satisfying itself as to correctness, legality or propriety of any findings, sentence or order passed and as to the regularity of any

proceedings of the Magistrate court. This court may call for such records either on the application of a party aggrieved or Suo moto.

The powers of supervision under section 44 (1) (a) are purely discretionary in nature and like any other discretionarily powers, has to be exercised judicially.

On Monday 14th December, 2020, I visited Handeni District Prison. During this visit I realized that several persons including Helina d/o Mkasha @ Kilonzo were in jail serving long sentences for offences related to genital mutilation, cruelty to children C/S 169 A (1) and (2) of the Penal Code.

Having heard their complaints, I directed the Deputy Registrar in terms of section 30 (1) (a) of the Magistrates Courts Act to call for the records of Kilindi District Court in Criminal Case No. 6 of 2020 for the purpose of inspection by this court. On being called, I directed revision proceedings to be opened.

The matter was called for hearing on 08/03/2021 and I invited the Republic through Ms. Regina Kayuni, learned state Attorney to address the court on the propriety, legality and regularity of the conviction, which were based on plea of guilty.

Ms. Kayuni was of the view that the alleged pleas were equivocal for several reasons including the fact that no memorandum of facts not in dispute was prepared as required by section 192 of the CPA.

I have carefully considered the learned State Attorney's concern in respect of Memorandum of matters not in dispute under section 192 of the CPA, and while I agree with her that the alleged pleas of guilty were equivocal, I do not go with her that the trial court was ought to prepare a memorandum of matters not in dispute.

A plea of guilty is formal admission by the accused in court that he committed the offence with which he is charged. It is a voluntary process and it comes only after the accused had been fully informed of his legal right the nature of the offence charged and the severity of the penalty for that offence.

In the present case there were two counts according to the charge sheet. The charge was read over and explained to the accused persons who pleaded that "Ni Kweli" which means it is true. However, the records do not show which count did the accused person plead guilty.

In other words the records would suggest that the two counts were not read separately and the pleas thereto were recorded separately in respect of each count. This is not the procedure.

Briefly the procedure is as follows. Upon a plea of guilty by the accused person being recorded, facts of the case are read over and properly explained to him and he is then invited to state if he/she admits or denies the same. Upon admission of the fact court makes a finding that the accused has pleaded guilty to the offence charged and has admitted the facts constituting the charge and it proceeds to convict him/her forthwith. The procedures of plea taking was widely elaborated in the case of ***Aidan V Republic [1973] EA 443*** which was cited with approval in the ***case of Mandisela Kunguni vs Republic Criminal Appeal No. 462 of 2017 [CAT – Mbeya Unreported]***.

Regarding the sentence passed, as offences, specified in the charge sheet were committed on the same transaction, then the sentence passed for the 1st and 2nd count ought to have been ordered to run concurrently as it was held in the case of ***Peter Mbugua Kabui vs R [Criminal Appeal no. 66 of 2015]*** as cited in the case of ***Festo Domician vs R [Criminal Appeal No. 477 of 2016 CAT (unreported)]*** and also the case of ***Suwedi Mukasa***

S/O Abdulla Aligwasa [1946] 13 EACA 97 in which it was stated that

the practice is that where a person commits more than one offence at the same time and in the same transaction, save in very exceptional circumstances, it is proper to impose concurrent sentences. In the present case sentence against the 1st accused were ordered to run consecutively.

No reason was given for that.

Thus, in exercise of its Revisional jurisdiction powers under section 30 (1) (a) and (b) (i) of the MCA, Section 31 (1) and 32(1) (b) of the same Act, I quash and set aside all proceedings, findings, decision and orders of Kilindi District Court in Criminal Case No. 18 of 2019. I further order that all accused shall be released or discharged from prison.

The National Prosecution Service (NPS) are at Liberty to institute a fresh charge on the same facts so that the case can be tried denovo.

Order accordingly.




Sgd: A.R. Mruma, J

12/04/2021