IN THE HIGH COURT OF TANZANIA

(IN THE DISTRICT REGISTRY)

AT MWANZA

HIGH COURT CRIMINAL APPEAL NO.68OF 2020

(Original Criminal case No 49 of 2018 before District Court of Chato at Chato)

MUSSA DAUDI..... APPELLANT

VERSUS

THE REPUBLIC .....RESPONDENT

JUDGEMENT

Last Order: 25.06.2021

Ruling Date: 25.06.2021

A.Z.MGEYEKWA, J

In the District Court of Chato, the appellant one Mussa S/O Daudi was arraigned and charged with impregnating a secondary school girl c/s 60A (3) of the Education Act No. 2 Cap 353 and upon conviction, the appellant was sentenced to serve 30 years imprisonment

In order to appreciate the decision I am going to make in this ruling, I find it pertinent to narrate, albeit briefly, material background facts to the appeal. They go thus: the prosecution alleged that Mussa S/O Daudi on unknown date and day of August, 2017 at about 15:00 hrs at Makurugusi village within Chato District in Geita Region, did impregnate one Grace D/O Mabonesho knowingly that she was a student at Makurugusi Secondary School. At the trial court, the accused pleaded guilty and the count entered the plea of guilt and convicted the accused and consequently sentenced him to serve 30 years imprisonment.

Aggrieved, the appellant lodged the instant appeal seeking to impugn the decision of the District Court upon a Petition of Appeal comprised of five grounds as follows:-

1. *THAT the trial court grossly and incurably erred in law and in fact to convict the appellant carefully determining the plea of guilty with the supportive evidence to sustain the alleged plea facts and charges thus perfunctorily process.*

2. *THAT the trial court overlooked and carelessly determined the plea of guilty which was purely imperfect and equivocal as per terms of section 228 of the criminal procedure Act cap 20 rec 2019 (sic).*

3. *THAT both the charge sheet and the alleged admitted facts were not ready over into the appellant's conversant language and/ or being explained to the appellant as per court record which not nearly recorded to reflects his own word he uses when pleading to the charge/facts.*

4. *THAT the manner in which the supported charge and facts were wrongly recorded in violation of mandatory provision under section 210 (i) (b) of the criminal procedure Act Cap 20 Re 2002.*

5. *THAT, the charge/pleaded charge, admitted facts, conviction and sentence at the appellant's door disclose whereby the appellant has deprived an opportunity to plea after each of the memoranda of facts read out by the prosecutor.*

Following the global outbreak of the Worldwide COVID-19 pandemic (Corona virus), the hearing was conducted via audio teleconference whereas the appellant and Ms. Sabina, Senior State Attorney for the respondent were remotely present.

After adopting his grounds of appeal comprised in memoranda, the appellant opted that the learned State Attorney should respond to grounds of appeal first reserving his right to rejoin after hearing the learned State Attorney.

Responding, Ms. Sabrina from the outset supported the appeal. Submitting on the second ground of appeal, she avers that the plea of guilt was wanting. She referred this court to the trial court records, and stated that it is not revealed when the facts were explained to the accused. She went on to state that the charge was read over to the accused person who pleaded guilty and on 01st February, 2018 the facts were read over but the records are silent if the facts were explained to the accused.

Insisting, she referred this court to the case of **Haji Samuel v Republic**, Criminal Appeal No. 316 of 2017 CAT, she avers that the court insisted on the importance of reading the facts to determine whether the plea was equivocal or not. She concluded that the appellant at a trial court was not asked if he admits the facts and that was fatal and the trial was not fair that she prays this court to order retrial. Re-joining, the appellant prays this court to set him free.

Having heard the arguments for and against the appeal I have to say that I will determine the issue whether the appeal is meritorious. In my determination, I will center on the 2nd ground of appeal as responded to and conceded by the Respondent that the plea was unequivocal. The

issue for determination is ***whether the appellant's plea of guilty was unequivocal or not.***

Having closely examined the record, I agree with the appellant and Ms. Sabina submissions that the trial court proceeding was tainted with irregularities. The plea entered was not unequivocal for failure of the trial court to abide by THE procedure. What transpired at the trial court was that on 31.01.2018 the charge was read over to the accused person who pleaded guilty. The prosecution prayed for an adjournment to prepare facts which were granted and the matter was called for hearing on 01.02.2018, the trial continued where the facts were read over to the accused person.

From this point, what I could observe in records is that the important procedure was not followed. As a matter of practice, the accused before the memorandum of facts was read over to him, was required to be reminded of the charge which he was facing which he pleaded guilty to enable the court to be sure that the accused is aware of the charge which is facing him. And if at all he maintains his plea of guilty as he previously did. In the case of **Mussa Mwaikunda V R** [2006] TLR 387, the Court of Appeal of Tanzania stated that the minimum standards which must be complied with and accused person to undergo fair trial are as follows:-

"He must understand the nature of the charge and He must plead to the charge and exercise the right to challenge it..."

This important aspect was not appreciated by the trial court and for those reasons, it leaves doubts as to if at all the accused person rightly pleaded to the charge.

Again, as claimed by the appellant and conceded by Ms. Sabina that the facts of the case after the trial court resumed on 01.02.2018 from when the accused pleaded guilty, and on 31.01.2018, the facts were not explained to the accused for him to make his reply. It is trite law that the facts must be detailed to allow the accused to understand the substance so that he can reply knowing what he replies to. This principle was stated in the case of **R v Yonesani Egalu and Others** [1942] 9 EACA 655 the court held that:-

"In any case in which a conviction is likely to proceed on a plea of guilty (in other words, when an admission by the accused is to be allowed to take place of the otherwise necessary strict proof of the charge beyond reasonable doubt by the prosecution) it is most desirable not only that every constituent of the charge should be explained to the accused, but that he should be required to admit or deny every constituent and that what he says should be recorded in

a form which will satisfy an appeal court that he fully understood the charge and pleaded guilty to every element of it unequivocally."

Equally, in the case, of **Kalid Athumani v Republic** 2006 [TLR] 79 and also **Buhimila Mapembe V.R** (1988) TRL 174, the court had the same observation.

Looking at the trial court records, the facts were read over to the accused but the same is not revealed on records that they were explained to the accused. For those reasons, the plea of not guilty cannot stand to warrant the conviction and sentence to the accused as it transpires on the trial court. 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 it was held 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 in respect to Criminal Case No. 49 of 2018, 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 case scheduling for trial be given priority, hearing to end within six months from today, and in the interest of justice, the period that the appellants' have so far served in prison should be taken into account. The appellants shall in the meantime, remain in custody to await the said trial.

Order accordingly.

DATED at Mwanza this 25th June, 2021.

A.Z MGEYEKWA

JUDGE

25.06.2021

Ruling delivered on this date 25th June, 2021 via audio teleconference whereas both learned counsels were remotely present.

A.Z MGEYEKWA

JUDGE

25.06.2021