

**IN THE HIGH COURT OF TANZANIA**

**IN THE DISTRICT REGISTRY**

**AT MWANZA**

**(APPELLATE JURISDICTION)**

**HC. CRIMINAL APPEAL No. 35 OF 2021**

*(Original Case No. 13 of 2021 of the District Court of Kwimba at Ngudu)*

**SHIJA MACHUNGWA .....APPELLANT**

**VERSUS**

**THE REPUBLIC.....RESPONDENT**

**JUDGMENT**

*16<sup>th</sup> & 30<sup>th</sup> June, 2021.*

**TIGANGA, J.**

The appellant, Shija Machungwa stood charged before the District Court of Kwimba, at Ngudu, in Criminal Case No. 13/2021, with two counts namely abduction contrary to section 133 and 134 and rape contrary to section 130 (2) (e) and 131 (1) both of the Penal Code [Cap 16 R. E. 2019]

According to the charge sheet and the evidence adduced before the trial court, it is evident that, on 16/02/2021 at about 17.00hrs at Kikubiji village within Kwimba District in Mwanza Region, the accused, now the appellant, did abduct **F d/o H** (names in initials) a school girl of form one



at Kikubiji Secondary school, a girl aged 16 years, without the consent of her parents and after abducting her, he unlawfully had carnal knowledge of the said girl.

On arraignment, the appellant pleaded guilty to both counts and was convicted on his own plea of guilty and sentenced, 5 (five) years imprisonment in respect of the first count, but 30 (thirty) years imprisonment in respect of the second count.

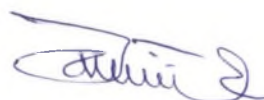
Aggrieved by both the conviction and sentence, the appellant filed seven grounds of appeal which upon passing through the contents, the same can be consolidated to form a single ground of appeal that the "trial Court erred in fact and law for convicting and sentencing the appellant basing on his plea of guilty which was a result of mistake or misapprehension of facts thus resulting into an unfinished and ambiguous plea of guilty which is equivocal."

When the appeal was called for hearing, the appellant asked the court to adopt his grounds of appeal as his arguments, allow his appeal and to let him free. The respondent, Republic was represented by Ms. Rehema Mbuya, Senior State Attorney who supported the appeal on the

ground that, the plea upon which the conviction based was equivocal. She submitted that the facts are somehow ambiguous and did not properly disclose the offence.

In her opinion, the facts to which the accused responded, could not establish the offence, and therefore he pleaded guilty mistakenly or on apprehension of the said facts. She asked the appeal to be allowed, and the matter be ordered to be tried *de novo*.

While dealing with this appeal, I find it important to point out that section 360 (1) of the Criminal Procedure Act, [Cap 20 R. E. 2019] prohibits appeals by persons who have been found guilty by the subordinate court, on their own plea of guilty, except as to the extent or legality of sentence. However, this general principle has exception as expressed in a number of case authorities one of them being the case of **Msafiri Mganga vs The Republic**, Criminal Appeal No. 57/2012 CAT - Dodoma, which also relied on the authorities in the case of **Lawrence Mpinga vs The Republic** [1983] T.L.R 166, and **Josephat James vs The Republic**, Criminal Appeal No. 316 of 2010 CAT Arusha, Registry. From these authorities, four principles can be deduced as follows;-



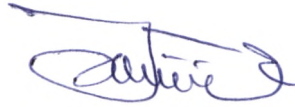
- i. The plea was imperfect, ambiguous or unfinished and, for that reason the lower court erred in law in treating it as a plea of guilty.
- ii. The appellant pleaded guilty as a result of mistake of misapprehension.
- iii. The charge levied against the appellant disclosed no offence known to law, and
- iv. Upon admitted facts, the appellant could not in law have been convicted of the offence charged.

In this case as readily conceded by the learned Senior State Attorney, the plea by the accused, who is now the appellant, was imperfect and ambiguous, because the facts which were produced in support of the charge were ambiguous and self contradicting, therefore, the trial court erred in law for treating it as a plea of guilty.

Now, basing on those findings, I find the appeal to be meritorious, the same is allowed, the conviction is quashed and the imposed sentence is set aside. I substitute thereat the plea of not guilty, and therefore direct the original record to be returned before the trial subordinate court, for hearing before that court.

It is accordingly ordered.

**DATED at MWANZA, this 30<sup>th</sup> day of June, 2021**

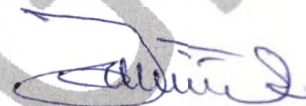


**J. C. TIGANGA**

**JUDGE**

**30/06/2021**

Judgment delivered in the presence of the appellant on line via audio conference and Miss. Mbuya, learned Senior State Attorney for the respondent, Republic. Right of Appeal explained and guaranteed.



**J.C. TIGANGA**

**JUDGE**

**30/06/2021**

