

IN THE HIGH COURT OF TANZANIA

IN THE DISTRICT REGISTRY

AT MWANZA

HC. CRIMINAL APPEAL NO. 72 OF 2021

(Original Criminal Case No. 71 of 2021 of the District Court of Bukombe District at Bukombe)

AMAN KAMUGISHA APPELLANT

Versus

THE REPUBLICRESPONDENT

RULING

4th & 11th August, 2021

RUMANYIKA, J.:

When, by way of audio teleconference on the two 2 counts and with respect to conviction and 30 years custodial sentence dated 09/3/2021 for offence of rape and impregnating a school girl C/Section 130 (1) and (2)(e) of the Penal Code and 60A of the Education Act (the Act) Chapters 16 and 353 RE 2019) respectively, the appeal was called on 4/8/2021 for hearing, Amani Kamugisha (the appellant) appeared in person. Ms. Lilian Meli learned state attorney appeared for the respondent Republic. I heard them through mobile numbers 0768563933 and 0717418929 respectively.

The appellant's six grounds of appeal revolve around 4 (four) points as follows:-

1. That, the appellant's plea actually it was equivocal.
2. That, with respect to the 2nd count the offence wasn't proved beyond reasonable doubts as the victim was not actually proved pregnant or a school girl.
3. That the appellant was, but both illegally and excessively sentenced to 30 years in jail.
4. That the appellant was without prosecution evidence convicted.

Unusually briefly, the appellant prayed for acquittal.

In a nutshell, Ms. Lilian Meli learned state attorney readily supported the appeal and submitted that the appellant's plea wasn't unequivocal however, on a second breath, looking at the appellant's response to the material facts during trial deposed by prosecutor, the learned state attorney revoked the concession and apposed the appeal that in fact the appellant was convicted on his own unequivocal plea of guilty to the charges.

The pivotal issue is whether the appellant's plea was unequivocal. The answer is yes because not only when the charges were read to him he replied "ni kweli" meaning it is true, but also when, with respect to both counts the material facts of the case were between the lines read to him, now invited by the court to respond the appellant replied; ***"Ni kweli nilifanya ngono na JH (the real name hidden) msichana wa miaka kumi na sita (16) mwanafunzi wa kidato cha pili Uyovu Sekondari na kumsabishia ujauzito"***

Literally meaning that it is true that I have had sexual intercourse with JH a Form II Uyovu Secondary School girl and she conceived. It means therefore, unless the appellant had pleaded that he did not, at the material time know that what he did was prohibited by the law which is not the case here, and, if anything ignorance of law is no defence, in blacks and whites therefore he knew before that the victim was a school girl and consequently he impregnated her. The appellant therefore he fore saw all these happening but he risked it all much as the best witness ever is an accused who confesses the guilty (case of **Amani Justine @ Mpana v.R**, Criminal Appeal No. 131/2018 (CA) unreported). Grounds 1, 2 and 4 and therefore the entire appeal is dismissed, much as the appellant's

unequivocal plea of guilty it meant nothing but a confession such that he admitted the essential ingredients of the offences as all being correct and he was ready to receive the sentences.

In the upshot, the appeal is, but after thought. It is entirely dismissed. It is so ordered.



S.M. RUMANYIKA
JUDGE
09/08/2021

Right of appeal explained.

The judgment is delivered under my hand and seal of the court in chambers this 11/08/2021 in the absence of the parties.



S.M. RUMANYIKA
JUDGE
11/08/2021