

**IN THE HIGH COURT OF TANZANIA
(MTWARA DISTRICT REGISTRY)
AT MTWARA**

CRIMINAL APPEAL NO. 111 OF 2020

(Originating from Criminal Case No. 91 of 2020 in the District Court of Lindi at Lindi)

RAMADHANI BAKARI YUSUPH@DODO.....APPELLANT

VERSUS

THE REPUBLIC.....RESPONDENT

JUDGMENT

9th August & 8th October, 2021

DYANSOBERA, J.:

Before the District Court of Lindi at Lindi, the appellant, Ramadhani Bakari Yusuph @ Dodo, was arraigned for the offence of unnatural offence contrary to section 154 (1)(a) and (2) of The Penal Code, [Cap. 16 R.E. 2019]. The particulars of the offence alleged that on 17.09.2020, at Madangwa Village within the District of Lindi the appellant had carnal knowledge of a girl of 3 years old against the order of nature. For purposes of hiding her identity, I shall herein after refer to her as NSU or "the victim".

When the charge was read over and explained to the appellant, he pleaded guilty to the offence. He was, ultimately, sentenced to serve a life imprisonment term. He was aggrieved by both conviction and

sentence. He has appealed to this court on the following grounds of appeal: -

1. That the trial court erred in law and fact in convicting and sentencing the appellant when at the first time in taking plea know where the trial magistrate was recorded if the charge was read and explained to the language as directed by the law.
2. That the trial court in law and fact in convicting and sentencing the appellant without taking into consideration that the appellant plea was imperfect and unfinished.
3. That the trial court erred in law and fact in convicting and sentencing the appellant without any birth certificate of the victim in order to prove the true age of the victim due to that the sentence is excessive as directed in the law.
4. That the trial court erred in law and fact when she convicted the appellant while the said proceedings contain a lot of errors because every thing narrated by the DPP the plea was plea of guilty which for an ordinary sense cannot accuse to anybody.
5. That the trial court erred in law and fact in convicting the appellant while the case was not proved to the required standard since failure to explain the ingredients of the offence in the

language understood by the appellant caused miscarriage of justice and the contents of PF3 was not read loudly in court that was against the law.

On 9th day of August, 2021 when this appeal was called for hearing the appellant appeared in person and unrepresented whereas the respondent/Republic enjoyed the services of Mr. Wilbroad Ndunguru, the learned Senior State Attorney.

In his submission in support of the appeal, the appellant informed the court that he had filed five grounds of appeal and had nothing to add.

The respondent resisted the appeal on the ground that it lacks merits. Besides, Mr. Ndunguru submitted that the appeal is in violation of section 360(1) of the Criminal Procedure Act which bars appeal against conviction where a person is convicted on his plea. The learned Senior State Attorney stressed that the appellant could only appeal against sentence.

As to the second ground, Mr. Ndunguru argued that on the basis of the record it is very clear that from the time when the charge was read over to the appellant, he pleaded guilty and his plea was unambiguous. Furthermore, the learned Senior State Attorney submitted that when the

facts were narrated to the appellant, he admitted. The learned Senior State Attorney further submitted that the appellant admitted to have committed the offence and was duly convicted on his plea. He contended that grounds of appeal numbers 1,2,3,4 and 5 have no basis. He explained that the case was not heard on merit and the best evidence came from the appellant. Coming to the issue of sentence, Mr. Ndunguru argued that the sentence is a minimum and the same should stand undisturbed.

There was no rejoinder on the part of the appellant.

I have carefully perused the records of the trial court. I have taken into account the grounds of appeal and the submissions of the parties.

After analysing the record of the trial court, the grounds of appeal and the submission from the learned Senior State Attorney for the respondent, I am satisfied that the only issue calling for determination by this court is whether the plea of guilty of the appellant was unequivocal.

As per the record, the appellant was convicted on his own plea of having carnal knowledge of the victim which offence is in contravention of section 154 (1)(a) and (2) of the Penal Code. On 29.10.2020 when the

charge was read over and explained to the appellant, he is recorded to have replied:-

‘ni kweli nimemfira mtoto huyo kinyume na maumbile yake”.

According to the charge sheet, the victim is said to have been 3 years old at the time the appellant carnally knew her against the order of nature. According to the facts which he admitted to be correct, the appellant on 17th day of September, 2020 in the evening was riding a bicycle at Madangwa. When he met the victim, he took her on his bicycle claiming that he was going to buy some juice for her at the shop. On arrival at the School football ground, the appellant stopped, took the victim from the bicycle. He undressed her underpants, took his male organ and inserted it into the victim’s anus and started carnally knowing her against the order of nature. After the appellant had finished the act, the victim started passing stools from the anus. The appellant took the bag and cleaned the victim with it. The appellant then took the victim to her grandmother one Khadija Twalib Omary who noted that the victim was crying non-stop. When the victim went for a short call, she was feeling much pain. Her grandmother examined her and found that she had been carnally known against the order of nature. The victim named the appellant to be responsible for the act. The victim’s neighbours were

informed, apprehended the appellant and took him to the WEO at Madangwa who referred the victim to Mnazi Mmoja Police Station. The police issued PF 3 to the victim and was medically examined at Mnazi Mmoja Health Centre and found to have been carnally known against the order of nature. A PF 3 was filled in by the medical officer and was tendered and admitted in court without objection. It was marked as exhibit P. 1. After the appellant admitted the facts to be correct, he and the public prosecutor signed on the facts.

With this cogent and compelling facts revealing the ingredients of the offence, like the court below, I am satisfied that the facts adduced disclosed the offence of unnatural offence of which the appellant unequivocally pleaded guilty. The conviction was properly entered. The grounds of appeal raised by the appellant are not relevant at all. Indeed the conviction stemmed from the appellant's own confession in court. Once it is shown, as was in this case, that the accused person pleaded guilty to a charge which was properly drafted and was before a competent Court and when the facts adduced disclosed the offence with which he was charged, a conviction entered, could not be easily disturbed by this Court.

I agree with Mr. Wilbroad Ndunguru, learned Senior State Attorney that the grounds of appeal raised by the appellant before this court are devoid of merits.

The sentence the appellant earned was the legal one which the law prescribed.

Accordingly, the appeal fails and is entirely dismissed. The trial court's judgment is endorsed.

It is so ordered.



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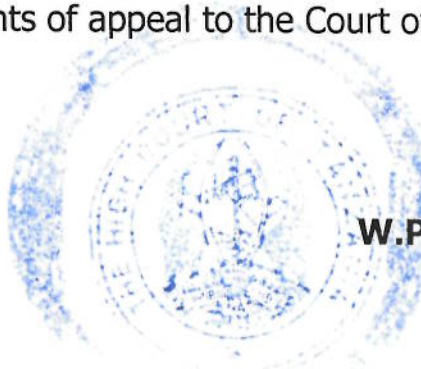
W.P. Dyansobera

Judge

8.10.2021

This judgment is delivered under my hand and the seal of this Court this 8th day of October, 2021 in the presence of the appellant in person and Mr. Paul Kimweri, learned Senior State Attorney for respondent/ Republic.

Rights of appeal to the Court of Appeal explained.



A handwritten signature in blue ink, appearing to read 'W.P. Dyansobera'.

W.P. Dyansobera

Judge