

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
MUSOMA DISTRICT REGISTRY

AT MUSOMA

CRIMINAL APPEAL NO. 102 OF 2021

*(Arising from Criminal Case No. 39 of 2021 in the District Court for Serengeti  
at Mugumu)*

CHEGERA s/o MAHEMBA @ MASAMBE..... APPELLANT

VERSUS

THE REPUBLIC..... RESPONDENT

**JUDGMENT**

*23<sup>rd</sup> March & 20<sup>th</sup> April, 2022*

**A. A. MBAGWA, J.:**

This is an appeal against both conviction and sentence resulting from plea of guilty.

The appellant, Chegera s/o Mahemba Masambe was arraigned in the District Court of Serengeti via Criminal Case No.39 of 2021 on indictment of rape contrary to sections 130(1) & (2)(e) and 131(1) of the Penal Code. The particulars of the charge alleged as follows;

***'Chegera s/o Mahemba Masambe on 12<sup>th</sup> day of May 2021 at Buchanchali, within Serengeti District in Mara Region, did rape one XY (the victim) a girl of ten years old'***

When the charge was read to the appellant on 21<sup>st</sup> May, 2021, the record tells it all that he pleaded guilty to the charge in the following words: -

***'Ni kweli nilimbaka XY (the victim)***

Following the appellant's plea to the charge, the trial court entered a plea of guilty and thereafter invited the prosecutions side to adduce the facts.

In a nutshell, the Prosecution account was that the appellant had sexual relationship with the victim's mother one Wandugi Mantago. On 12<sup>th</sup> May, 2021 the appellant went to Wandugi Mantago's she was not present. Instead, the appellant found the victim, a daughter of Wandugi. At the material time the victim was ten years old. The appellant entered the house and ordered the victim to follow him. Therein, the appellant undressed the victim and removed his trousers. He then started having sexual intercourse with the victim. The victim sustained pains and her vagina ruptured along with excessive bleeding.

On noting the consequences, the appellant brought a bodaboda and took the victim to Nyerere Designated District Hospital at Mugumu. Upon arrival, the appellant was told to first obtain PF3 from police before the victim could be attended. In the course of pursuing PF3, the information on the

commission of the offence was unearthed hence he was arrested. According to the facts adduced, upon interrogation by the police, the appellant admitted commission of offence.

The victim was medically examined and her vagina was found penetrated and her hymen perforated. Further, the examining officer observed spermatozoa and blood discharge from genitalia. In addition, the prosecution tendered a PF3 which was admitted as (PE1) established the medical findings.

When the appellant was called on to respond to the facts, he admitted all the facts as true in the following words;

***'Ni kweli maelezo yapo sawa ninayakubali'***

On all this account, the trial court found the appellant guilty and subsequently convicted him of rape contrary to sections 130(1) & (2)(e) and 131(1) of the Penal Code. Consequently, sentenced him to a thirty (30) year jail term.

It is against this backdrop, the appellant has knocked the door of this Court assailing both conviction entered and sentence meted out by the trial court.

The appellant filed a petition of appeal containing three grounds which can be reduced to one meaningful ground namely;

The trial court erred in law and fact to convict and sentence the appellant based on equivocal plea of guilty.

When the matter was called on for hearing through video conference, the appellant appeared in person to prosecute his appeal whilst the respondent was represented by Isihaka Ibrahimu, learned state attorney.

The appellant had little to tell the court. He contended that he unfairly convicted in that he was forced to admit the offence. He thus implored the Court to allow his appeal and set him free.

To the contrary, Mr. Isihaka Ibrahimu, learned state attorney resisted the appeal. He said that section 360(1) of the CPA prohibits appeal against conviction on plea of guilty save where the appeal is on illegality of a sentence. Further, the state attorney submitted that there are legal exceptions where an appeal against conviction on plea of guilty may be allowed. He referred to the case of **Charles Samwel Mbise vs Republic**, Criminal Appeal No. 355 of 2019, CAT at Iringa at page 8 and said that the Court enumerated four circumstances to wit;

- 1) where the plea is imperfect or ambiguous.
- 2) where plea has been caused by misapprehension.
- 3) where the charge has not disclosed the offence recognized by law.
- 4) Upon admitted facts, he could not in law, have been convicted.

The state attorney argued that by looking at the grounds of appeal, none of them challenges the legality of the sentence nor does the instant case fall under any of the four circumstances listed above.

Mr. Isihaka Ibrahimu was strongly opined that the appeal is arid of merits hence he prayed the Court to dismiss it.

I have accorded a deserving attention to the submissions made by the parties along with the record of appeal. It is a common ground that the appellant pleaded guilty to the offence of rape. Thus, the key issues for determination is whether the plea was equivocal and whether the sentence imposed was illegal. The appellant contends that the plea was unequivocal on the ground that he was forced to admit the offence. With due respect to the appellant, the record speaks against him. Starting with charge, it is very clear both in the statement and particulars of offence that the appellant was charged with rape of a girl under eighteen years contrary to sections 130(1)

& (2)(e) and 131(1) of the Penal Code. Apart from pleading guilty, the appellant admitted all the facts narrated by the prosecutions.

I have revisited the facts adduced and I am increasingly satisfied that the facts sufficiently disclose the offence charged and implicate the appellant beyond reasonable doubt. In addition, upon appraising, the record I failed to see any signs of force or coercion as contended by the appellant.

It is a settled law that appeal against conviction of plea of guilty is not allowed except where it is established that even taking into consideration the admitted facts, the plea was ambiguous, imperfect or unfinished, the appellant pleaded guilty as a result of mistake or misapprehension, the charge laid at the appellant's door disclosed no offence known to law or upon the admitted facts the appellant could not in law have been convicted of the offence charged. See the cases of **Faruku Mushenga vs the Republic**, Criminal Appeal No. 356 of 2014, CAT at Bukoba and **Simon Ndikulyaka vs the Republic**, Criminal Appeal 231 of 2014, CAT at Bukoba.

In view thereof, I am inclined to hold that the plea was unequivocal. I have gone through the record but I could not see any of the scenarios stipulated above.

With regard to the sentence imposed, the provisions of section 131(1) of the Penal Code provides a minimum sentence of thirty-year imprisonment. Since the trial magistrate imposed a minimum sentence, I see no any justification to disturb it.

That said and done, this appeal is dismissed. Conviction entered and sentence of thirty-year imprisonment are upheld.

It is so ordered.

Right of appeal is explained.



  
**A. A. Mbagwa**  
**JUDGE**  
**20/04/2022**

**Court:** This judgment has been delivered via teleconference in the presence of the appellant and Nimrod Byamungu (SA) for the Republic this 20<sup>th</sup> April, 2022

  
**A. A. Mbagwa**  
**JUDGE**  
**20/04/2022**