

**IN THE HIGH COURT OF TANZANIA**

**(MTWARA DISTRICT REGISTRY)**

**AT MTWARA**

**CRIMINAL APPEAL NO. 93 OF 2020**

(Originating from Nachingwea District Court Criminal Case No. 80 of 2020 before Hon. S.W. Mwalusamba, RM.)

**ABDALLAH ISSA.....APPELLANT**

**VERSUS**

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

**JUDGMENT**

14<sup>th</sup> Febr. & 31<sup>st</sup> March, 2022

**DYANSOBERA, J.:**

The appellant was convicted by the District Court of Nachingwea on his plea of guilty to the offence of rape c/ss 130 (1) (2) (e) and 131 (1) of the Penal Code [Cap 16 R.E. 2002, now 2019]. He was alleged to have raped a young girl aged 16 years old. He was sentenced to 30 years' prison term.

Aggrieved, he has appealed to this court challenging the trial court's decision on six grounds of appeal which point out to the propriety of the plea of guilty he entered before the District Court.

At the hearing of this appeal, the appellant paddled his own canoe while the respondent Republic was represented by Mr. Lugano Mwasubila, learned State Attorney.

Adopting his petition of appeal, the appellant informed this court that he had nothing to add.

Responding to the petition of appeal, Mr. Lugano Mwasubila declined to support the appeal arguing that the appellant's appeal was misconceived in view of the clear provisions of section 360 (1) of the Criminal Procedure Act which bars appeals based on convictions on pleas of guilty save only on legality of sentence. He submitted the appellant's plea was not equivocal and the trial court took into account all legal requirements. He dismissed the appellant's complaint that the plea was ambiguous as spelt out in the case of **Laurent Mpinga v. R** [1983] TLR 166. It was learned State Attorney's submission that at page 6 of the trial court's proceedings it is indicated that when the case was for preliminary hearing and after the charge was read over to the appellant, he denied but after the facts were read over to him, he admitted. Learned State Attorney insisted that the charge was again reminded over to the appellant and in his response, he admitted in detail

and by his own words added that the victim was his love partner (mchumba wake). The facts were read over to him again and he maintained that the facts were correct. The appellant was asked if he had any corrections but he insisted that what was narrated was correct. This plea, in the State Attorney's view, was unequivocal and the appellant knew what was being read over to him, otherwise, the record would have reflected what he is now asserting. This court was referred to the decisions in the cases of **Mathias Barua v. R.**, Criminal Appeal No. 105 of 2015 and **Frank Mlyuka v.R.**, Criminal Appeal No. 404 of 2018. Learned State Attorney urged this court to find the conviction and sentence proper and prayed the appeal to be dismissed in its entirety.

In his rejoinder, the appellant told this court that when the charge was read over to him he was not in good mood. He argued that the exhibits were not read over to him. He said that he is known as Abdallah Issa and not Abdallah Issa Makwinya. He also contended that he is not conversant with the law and prayed the court to assist him.

I have perused the lower court's record and considered the grounds of appeal and the submissions of either sides. I am satisfied that the appellant

pleaded guilty to the charge after the facts were narrated to him during the preliminary hearing. He did not dispute the facts adduced by the prosecution in support of the charge on the offence of rape. Under section 360 (1) of the Criminal Procedure Act, it is provided thus:-

*"(1)- No appeal shall be allowed in the case of any accused person who has pleaded guilty and has been convicted on such plea by a subordinate court except as to the extent or legality of the sentence".*

As rightly pointed out by the learned State Attorney, the appellant's appeal is statutorily barred. I am aware that under certain circumstances, such appeals can be entertained by the Court, for instance, where it appears, first that the appellant did not appreciate the nature of the charge or did not intend to admit he was guilty of it, or, second, that upon the admitted facts he could not in law have been convicted of the offence charged.

In the case on hand, the appellant was rightly convicted on his own plea. The facts narrated by the public prosecutor constituted the ingredients of the offence of rape. His plea was unequivocal because he accepted the said facts as true. Likewise, the same appellant had earlier on confessed

before WP 975 DC Martha to have carnally known the victim, a girl of 16 years old who was schooling at Kipara Secondary School. His confession was admitted in evidence without objection. In his mitigation, the appellant told the court that he was praying for leniency because the victim was not affected with any disease or pregnancy. The appellant's argument that he did not understand Kiswahili language is but an afterthought in view of admission of all the facts that gave rise to his conviction and the trial court's record being silent on that complaint. The conviction was, in the circumstances of the case, unavoidable. The sentence meted to him was the bare minimum prescribed by law.

The appeal fails and is dismissed in its entirety.



**W.P. Dyansobera**

**Judge**

**31.3.2022**

**Court:** Judgment to be delivered by the Deputy Registrar, High Court of Tanzania, Mtwara District Registry.



**W.P. Dyansobera**

**Judge**

**31.03.2022**