IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(SUMBAWANGA DISTRICT REGISTRY)

AT SUMBAWANGA

DC. CRIMINAL APPEAL NO. 80 OF 2021

IGNAS S/O SANGU ..... APPELLANT

VERSUS

THE REPUBLIC ..... RESPONDENT

(Appeal from the decision of the District Court of Sumbawanga at Sumbawanga)

(M. S. Kasonde, SRM)

Dated 9th day of October 2020

In

Criminal case No. 238 of 2020

JUDGMENT

08/06 & 11/07/2022

NKWABI, J.:

On his declared two grounds of appeal, the appellant is bidding allow his appeal, quash the conviction on rape offence and release him. He was sentenced to thirty years imprisonment after he was convicted for raping a girl (M.M.) aged 17 years on his own plea of guilty. The girl conceived because of having sexual intercourse with the appellant.

The appellant was arraigned before the trial court. When the charge was read over and explained to the appellant, in the trial court, and upon being called upon to plea, the appellant replied:

"It is true."

Then facts of the case were read over and explained to the appellant and when asked as to the correctness of the facts the appellant replied:

"The facts are correct and true."

The trial court was satisfied with the plea of the appellant, found him guilty as charged, convicted him as charged and sentenced him to serve 30 years imprisonment. Some of the facts which were admitted by the appellant are that and I quote:

"Particulars of the accused person are as per charge sheet. ...

While there, the accused had carnal knowledge of one M.M. (name concealed), a girl aged seventeen (17) years.

The charge sheet had the name of the accused indicated as Ignas Sangu. So, that name was admitted by the appellant as correct.

After dropping some of the grounds of appeal, during submissions by the counsel for the appellant, there remain:

1. *"That the trial Court erred in law point and in fact to convict and sentence the appellant relying on plea of guilty while fail to note out that he was denied an opportunity to dispute or add anything relevant to fact in order to make the Court satisfy in all spheres.*
2. *That, the trial Court erred in law point and fact to convict and sentence the appellant immediately without considering that the charge against the appellant were not read twice and explained correctly in order to prove if the appellant understood what he plea before the Court and indeed draw a null conviction.*

When the appeal was called up for hearing, Mr. James Lubus, learned advocate appeared for the appellant and the appellant was present in person. Mr. John Kabengula, learned State Attorney, appeared for the Respondent the Republic.

In submission in chief, Mr. Lubus maintained that the appellant pleaded guilty but was a result of mistake or misapprehension. The Appellant did not understand. The plea of the appellant is ambiguous. The charge sheet

and the facts were not clear. He stressed, else the appellant would have not pleaded. He referred me to the case of **William s/o Sondas Sikazwe V. Republic,** DC Criminal Appeal No. 57 of 2020 the decision of this court at page 7 where another decision of this court was referred to.

He further argued that the offence is grave, even if the appellant pleaded guilty the case ought to have gone to full trial. See also **Erasto Nuru Jailos V. Republic,** Criminal Appeal No. 43 of 2020 High Court at Mbeya at page 8 of the typed judgment.

Mr. Lubus also asserted that in the current case the facts of the case were not explained to the accused person. He fortified his argument by the case of **Samson Marco & Another V. Republic,** Criminal Appeal No. 446/2016 Court of Appeal at page 5 and 7. The appellant ought to have not been convicted, he observed. He added the matter ought to have been adjourned to another date. See also page 10 of the case of Samson see also **Mandisela Kungwa V. Republic,** Criminal Appeal No. 462/2003, Court of Appeal of Tanzania. The appellant is not knowledgeable of Kiswahili, he would not understand well.

Mr. Lubus further contended that justice should not only be done but be seen to be done, let it be ordered for trial before another magistrate, he could also be released. See also the case of **DPP V. Kenedy s/o George @ Kilatu & 2 Others,** the decision of the High Court at Sumbawanga.

To counter the submissions of Mr. Lubus, Mr. Kebengula – Stated that under section 360 (1) of the Criminal Procedure Act where a plea of guilty is entered and a conviction therefrom, no appeal shall lie. I concede that case laws have allowed for appeal on plea of guilty.

Mr. Kabengula was of a further view that the position in **Laurent Mpinga's** case was reinforced in the case of **Joel Mwangambako V. Republic,** Criminal Appeal No. 516 of 2017, the decision of the Court of Appeal of Tanzania. He further explained that the appellant pleaded guilty. Facts of the case which read over to the appellant were clear and not ambiguous. The claim that appellant did not understand the proceedings is just an afterthought. The charge sheet is proper and has no defects. It does not mean that when one comes from the village then one does not know Kiswahili. The appellant did not tell the court that he does not know Kiswahili, so the allegation is an afterthought.

Mr. Kabengula was clear about the position of the Respondent in this appeal where he stated that he resists the appeal, and asked this court it be dismissed. The sentence is in accordance with the law. He supported the conviction and the sentence.

Mr. Lubus was very brief in his rejoinder submission. He clearly disputed the submissions of the State counsel. He stressed that the facts of the case were ambiguous. The appellant could have admitted that he lives at Kaengesa. He elaborated that the appellant admitted things he did not understand. He might have admitted only one fact example his name. For those reason, stated Mr. Lubus he prayed the appeal be allowed, conviction be quashed and sentence be set aside.

To me it is clear that the position of the law as stated in **Laurent Mpinga v. Republic** [1983] TLR 166 has yet to be changed. The circumstances in which an appellant in an appeal of this nature may succeed still are:

> *"An accused person who has been convicted of an offence "on his own plea of guilt" may appeal against the conviction to a higher court on any of the following grounds*

A. *That, even taking into consideration the so called admitted facts, his plea was imperfect, ambiguous or unfinished and for that reason, the lower court erred in law in treating it as a plea of guilt.*

B. *That he pleaded guilty as a result of mistake or misapprehension.*

C. *That the charge laid at his door disclosed no offence known to law.*

D. *That upon the admitted facts he could not in law have been convicted of the offence charged."*

In the first place, I will decide the argument that since this is a serious offence, the case ought to have gone to full trial. I do not buy the argument of Mr. Lubus. The offence that the appellant was charged with attracts a punishment of 30 years imprisonment. That sentence is just the same as that was imposed in the case of **Joel Mwangambako v. Republic,** Criminal Appeal No. 516 of 2017, the decision of the Court of Appeal of Tanzania where the Court of Appeal confirmed the conviction and sentence of 30 years imprisonment against the appellant. This offence therefore is

liable to be determined by a plea of guilty. The argument has no bases. It is dismissed.

I turn to consider the claim by the appellant and his counsel that the facts of the case were not clear, he could have admitted only his name and his residential address. Mr. Kabengula was not persuaded by that ground of appeal, so do I. The appellant categorically admitted a clear fact that he had carnal knowledge of M.M. a girl aged 17 years and as a result she conceived. That plea is in line with the authority of **Joel Mwangambako V. Republic** (supra). The circumstances are distinguishable with the case of **Samson Marco & Another V. Republic** because indeed, in the case of Samson, a material fact was not clear, that is whether the weapon was used against the owner of the robbed properties or other persons. In my view and my analysis, the plea of the appellant was unequivocal.

I accept Mr. Kabengula's contention that the claim that the appellant does not know well Kiswahili language is not borne by the record. In the circumstances, in fact, it is an afterthought, it is rejected. Further, there is no legal requirement that a charge sheet should be read twice to an accused

person (the appellant in this case). That line of complaint is unmerited and so it is dismissed.

In the premises, the conviction and sentence meted out by the trial court against the appellant are upheld. Ultimately, the appeal is dismissed in its entirety.

It is so ordered.

DATED at **SUMBAWANGA** this 11th day of July 2022.

J. F. NKWABI

JUDGE