

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

DISTRICT REGISTRY

AT TABORA

DC. CRIMINAL APPEAL NO. 3 OF 2020

(Originating from Nzega District Court in Criminal Case

No.231 of 2017)

WILIAM RICHARD.....APPELLANT

VERSUS

THE REPUBLICRESPONDENT

JUDGMENT

Date: 19/6/2022&15/07/2022

BAHATI SALEMA, J.:

In the District Court of Nzega at Nzega in Criminal Case No.231 of 2017, the appellant **William s/o Richard** was charged with unnatural offence contrary to section 154 (1)(a) of the Penal Code, Cap.16. He was convicted and sentenced to life imprisonment.

Aggrieved, the appellant filed his appeal to the High Court of Tanzania at Tabora armed with 6 grounds of appeal namely;

1. *That, the admission of the facts of the case (not the charge) was not completed, it was ambiguous and equivocal.*

2. *That, the learned trial magistrate erred for failure to note that the case before her called for a full trial in light of the admission of only one fact of the case (not all facts)*
3. *That, the appellant was not given a chance to clarify to the trial court with whom he had carnal knowledge.*
4. *That, the PF3 of the alleged victim of the offence (exhibit P1) was not read aloud in the hearing of the appellant. This affected the admission of the case by the appellant.*
5. *That, the age of the victim was not proved at all.*
6. *That the presiding magistrate did not make a finding wherever the plea of guilty was unambiguous and unequivocal and that the conviction of the appellant was entered in the absence of such a crucial finding.*

At the hearing, the appellant, being a lay person, had nothing to submit. He just adopted his grounds of appeal and opted to allow the learned State Attorney to respond first, and if the need arises, he will give his re-joinder submission later. On the other hand, the respondent/Republic was represented by Mr. Rwegira Deusdedit, learned State Attorney. From the outset, Mr. Rwegira supported the appeal.

In his submission, the learned State Attorney supported the appeal and further stated that, according to the proceeding dated 10/08/2017 the matter was set for preliminary hearing. The accused was ready and he did not plead thereto and was recorded so. However, the record shows that on 24/08/2017 the facts of the offence which were not reflected in the proceedings have been recorded that the accused admitted to having carnal knowledge and the court recorded and convicted him on his own plea.

Mr. Rwegira further submitted that, the offence of unnatural was never admitted by the accused since he did not plead thereto. He only stated that;

"It is true I had carnal knowledge but there is nowhere revealed that the PH was read to him."

Since the facts were not recorded in the proceedings and the respondent was not in a position to understand the ingredients of unnatural offence. The plea of the accused was incomplete as the offence of unnatural was never established. He also submitted that the record shows that the PF3 was admitted but it does not show if it was read before the accused. He prayed to the court to allow the appeal.

In his re-joinder submission, the appellant had nothing useful to submit and left it to the court to use its wisdom and reach a just decision.

Having keenly considered the submissions and the record of the court. The issue is whether the appeal is meritorious.

It is a legal requirement that a plea of guilty should be unequivocal. This means that it should be free from any ambiguity; the case of **Baraka Lazaro v. Republic**, Criminal Appeal No. 24 of 2016 in the Court of Appeal of Tanzania (CAT) at Bukoba (unreported), followed by the case of **Abdallah Jumanne Kambangwa v. Republic**, Criminal Appeal No. 321 of 2017 by the High Court of Tanzania at Dar es Salaam, (unreported). In this case, the court further held, and I quote the relevant paragraph for a reference;

*"In any case in which a conviction is likely to proceed on a plea of guilty (in other words **when an admission** by the accused is to be allowed to the place of the otherwise necessary strict proof of the charge beyond reasonable doubt by the prosecution). It is most desirable not only that every constituent of the charge should be explained to the accused, but that he should be required to admit or deny every constituent and that what he says should be recorded in a form that will satisfy an appeal court that he fully understood the charge and pleaded guilty to every element of it unequivocally."*

In line with the legal position above, the issue in the matter at hand is that was the plea of guilty by the appellant unequivocal? For a plea of guilty to be accepted as unequivocal, a trial court, like the lower court, is required to follow the proper procedure for recording such a plea.

In respect of subordinate courts, the procedure is provided under section 228 (1) and (2) of the Criminal Procedure Act, Cap. 20 [R.E 2019]. It provides, thus;

"The substance of the charge should be read to the accused, who shall be asked to plead thereto." If he admits the truth of the charge, his admission shall be recorded as nearly as possible in the words he uses and the magistrate shall convict him and pass sentence upon or make an order against him, unless there appears to be sufficient cause to the contrary."

It is also the stand of the law that the violation of the procedure demonstrated above warrants an appellate court to quash the proceedings, the conviction, and set aside the sentence. This is done on the grounds of denying the accused's right to a fair trial.

In the matter at hand, as stated by the State Attorney, the record of the lower court of the typed proceedings depicts that the learned trial magistrate did not observe the proper procedure.

This was also supported by the learned State Attorney that the facts which were read did not disclose the offence. According to the record on 24/08/2017 the facts of the offence were not reflected in the proceedings but the trial court recorded that the accused admitted to having carnal knowledge and the court recorded and convicted him on his own plea.

I have objectively read the entire proceedings of the trial court and found that it is true that the plea was ambiguous. Some criteria have to be adhered to for a person to be convicted on his/her plea of guilty. From this point, what I observed from the records is that the significant procedure was not followed.

It is a well-settled principle of law that the plea must be clear and understood and should capture or address the contents of the charge. It was therefore necessary for the court to explain the elements of the offence in the language understood by the accused before he could offer the plea. In the case of **Buhimila Mapembe V.R.** [1988] TLR 174.

Having observed as above, the plea could not, therefore, support the conviction and sentence imposed against the appellant. Consequently, the appellant's conviction is quashed. The sentence and orders earlier imposed upon the appellant are set aside. The court orders immediate release of the appellant unless he is held in custody for other lawful cause.

Order accordingly.

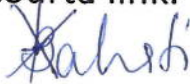


A. BAHATI SALEMA

JUDGE

15/7/2022

Ruling delivered in chamber on this 15th July, 2022 in the presence of the appellant, through virtual court link.



A. BAHATI SALEMA

JUDGE

15/07/2022

Right of Appeal fully explained.



A. BAHATI SALEMA

JUDGE

15/07/2022

