IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

AT TABORA

CRIMINAL APPEAL NO. 72 OF 2021

(Originating from Uyui District Court in Criminal Case No. 41 of 202)

RAMADHANI S/O SALUM .....APPELLANT

VERSUS

REPUBLIC .....RESPONDENT

JUDGMENT

Date: 25/4/2022& 13/5/2022

BAHATI SALEMA, J.:

The appellant, **Ramadhan s/o Salum Tande**, was convicted by the District Court of Uyui District for the offence of rape contrary to sections 130 (1) (2) (e) and 131 (1) of the Penal Code, Cap. 16 [R.E 2019], and sentenced to serve a custodial sentence of thirty years in jail.

Aggrieved, the appellant lodged the instant appeal seeking to impugn the decision of the District Court upon a Petition of Appeal comprised of five grounds as follows:

1. *That, the case for the prosecution was not proved, against the appellant, beyond reasonable doubt, as required by the law.*

2. *That the alleged plea of guilty by the appellant was ambiguous and equivocal.*

3. *That, even on the admitted facts of the case, the appellant cannot be convicted because the same does not constitute the ingredient of the offence which the appellant stood charge.*

4. *That, the learned trial magistrate erred in law and fact to allow the prosecutor to read the fact of the case under Section 192(3) of the Criminal Procedure Act, Cap 20 [R.E. 2019] which does not carter for the accused persons who have pleaded guilty. The omission of which affected the plea of guilty by the appellant.*

5. *That, failure to read aloud in court exhibit P1 and P2 in the hearing of the appellant, affected the plea of guilty by the appellant.*

To appreciate the decision, I find it pertinent to narrate, albeit briefly, material background facts relevant to the appeal. The prosecution

alleged that Ramadhan Salum Ntande, on 21 May,2021 at about 19 hrs at Ilolangulu Village within Uyui District in Tabora region, raped one XY (name withheld for identity purposes), a form three student at Ilolangulu Secondary School. He was arrested by the police and taken to Ilolangulu police station.

At the trial court, the accused pleaded guilty and the count entered the plea of guilt, convicted the accused, and consequently sentenced him to serve 30 years of imprisonment.

During the hearing of this appeal, the appellant was unrepresented, whereas the Republic was represented by Mr. John Mkonyi, State Attorney. The appellant, being a layperson, opted for the State Attorney to start.

Submitting on the grounds of appeal, Mr. Mkonyi, the State Attorney, supported the appeal. He also prayed to this court to consolidate the first, second, third, and fourth grounds of appeal since they were related and, as to the last ground, he submitted it separately.

Submitting on the grounds of appeal, he stated that it is indeed true that the lower court did not adhere to the procedure. He submitted that the record reveals that the accused pleaded guilty to the offence. Then the facts were read and he was convicted for 30 years. He further

stated that the plea did not conform to the law. To substantiate his stance, he cited the case of **Adan Vs Republic EALR, 1973,** on page 4, where the court set out five procedures for recording the plea of guilty as follows;

1. *That the charge and the particulars of the offence should be explained to the accused, in the language that he/she understands.*

2. *That the plea should as far as possible be recorded in the words of the accused.*

3. *In the event of a plea of guilty the fact should be stated to the accused, and he/she should be granted an opportunity to respond.*

4. *That if an accused disputes the facts of the charge a plea of 'Not guilty' must be entered.*

5. *Where there is more than one accused jointly charged, the plea of each should be recorded separately. And if a charge or indictment contains several counts the accused must be asked to plead to them separately.*

In the event that an accused does not change his/her plea, a plea of guilty should be entered and a conviction recorded, and after mitigation

and facts relevant to sentence are taken, the sentence can be meted out."

He further submitted that, according to the records, on page 1 of the proceedings of the trial court, the information was insufficient. The court erred in entering a plea of guilty. The court was supposed to enter a plea of guilty after having read all the facts.

Also on page 2, he stated that the facts were read by the prosecution but did not disclose the elements of the offence. In paragraph 2 of the same page, it does not state the offence with which the appellant was charged. It does not state clearly what the ingredients of rape are. Therefore, the plea was equivocal.

In respect of the second ground, the failure to read aloud in court exhibits P1 and P2 in the hearing of the appellant affected the plea of guilty by the appellant.

Mr. Mkonyi submitted that the exhibit and attendance sheet were not read before the court. He contended that had the PF3 been read, it would have established whether the victim was raped or not. Hence, non-reading creates doubts. Therefore, he supported the appeal and prayed to this court to quash the decision of the lower court. He further contended that since the error was committed by the court, he prayed

to this court to order a retrial for the court to hear the matter afresh in the interest of justice.

In reply, the appellant had nothing more to add. He prayed to the court to adopt his appeal.

Having heard the arguments for the appeal, the issue for determination is whether the appeal is meritorious.

Starting with the consolidated grounds of appeal, I find it important to cite the case of **Mussa Mwaikunda V R** [2006] TLR 387, where the Court of Appeal of Tanzania stated that,

> *"The minimum standards which must be complied with for an accused person to undergo a fair trial are as follows: He must understand the nature of the charge, and he must plead guilty to the charge and exercise the right to challenge it. This important aspect was not appreciated by the trial court, and for those reasons, it leaves doubts as to if at all the accused person rightly pleaded to the charge."*

In this appeal, the learned State Attorney supported that the procedure for the plea of guilty was equivocal and ambiguous and was not in accordance with the law. 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 own plea of guilty. This court has noted that what transpired at the trial court was that; on 28 May,2021 the charge was read over to the appellant, who pleaded guilty. The prosecution read the facts to the accused and proceeded to tender the exhibits without asking the accused if the statement read was true. The trial court continued to read the facts over to the accused person. From this point, what I observed from the records is that the significant procedure was not followed. As a matter of practice, before the memorandum of facts was read over to the appellant, the accused was required to be reminded of the charge which was facing him and to which he pleaded guilty, to enable the court to be sure that the accused was aware of the charge facing him and, if at all, he maintained his plea of guilty as previously pleaded. However, the trial court never recorded what transpired after the charge was read over to the appellant. The appellant pleaded guilty and the facts were not explained to the appellant for him to make his reply.

As submitted by the State Attorney, I join hands that the plea of guilty cannot stand to warrant the conviction and sentence of the appellant as it transpires in the trial court. I wish to reiterate the principle of law governing the plea of guilty.

It is a well-settled principle of law that the plea must be clear, understood and should capture or address the contents of the charge. Under the old regime of justice administration, the words "*it is true your honor*" could not alone amount to an unequivocal plea where the charge involved technical elements of the offence. 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, the court stated that:

> *"In any case in which a conviction is likely to proceed on a plea of guilty, 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 element of it unequivocally.*

The court went on to state that ;

The words " It is true " when used by an accused person may not necessarily amount to a plea of guilty, particularly where the offence is a technical one , where the offence charged is rather technical and the accused is unrepresented, it is desirable that the technical words be adequately explained to the accused before he is asked to plead thereto.

Therefore, in my view, the appellant's plea was equivocal enough to constitute a conviction.

On the second issue, Mr.Mkonyi submitted that the exhibit and attendance sheet were not read before the court. I also concede to this since PF3 would have been established if the victim was raped. Hence, the non-reading of the documents was fatal. In the case of **Robinson Mwanjisi and 3 others Vs. Republic** [2003] TLR 2018, the Court held;

> *"Documentary evidence whenever it is intended to be introduced in evidence must be initially cleared for admission and then actually admitted before it can be read out."*

Regarding the prayer by the State Attorney that this court should order a retrial. The answer is available in the case of **Shaban Abdallah V Republic**, Criminal Appeal No. 255 of 2013 (CAT at Dar es Salaam (Unreported). Luanda, JA held that;

> *"In general, a retrial will be ordered only when the original trial was illegal or defective. It will not be ordered where the conviction is set aside because of the inefficiency of evidence or for the purpose of enabling the prosecution to fill up gaps in its evidence at the first trial. Even where a conviction is vitiated by a mistake of the trial court for which the prosecution is not to blame; it does*

*not necessarily follow that a retrial shall be ordered; each case must depend on its facts and circumstances, and the order of retrial should only be made where the interests of justice require "**Fatahali Manji v. R** [1996] EA 341.*

This being the case I find merit in this appeal and will proceed to allow it. Consequently, the trial court's plea of guilty and conviction are quashed and the sentence is set aside. In the same vein, I further direct that the court should proceed with the hearing by taking the plea of the appellant afresh from another magistrate.

Order accordingly.

BAHATI SALEMA

JUDGE

13/5/2022

Date: 13/5/2022

Coram: Hon. G.P.Ngaeje, Ag DR

Appellant: Present.

Respondent: Absent.

B/C Grace Mkemwa, RMA

Court: Ruling delivered in presence of the applicant, only in the open court.

Court: Judgment delivered in presence of the appellant only in the open Court.

G. P. NGAEJE

Ag DEPUTY REGISTRAR

13/05/2022

Court: Right of appeal fully explained.

G. P. NGAEJE

Ag DEPUTY REGISTRAR

13/05/2022