

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(TANGA DISTRICT REGISTRY)**

**AT TANGA**

**CRIMINAL APPEAL NO. 81 OF 2020**

*(Arising from the Judgment in Criminal Case No. 77 of 2020 of the District Court of Muheza at Muheza (Hon. C.Y. Zahoro – RM1 dated 21/07/2021)*

**AMEDEUS DONATI.....APPELLANT**

**-VERSUS-**

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

**JUDGMENT**

*Date of last order: 05/11/2021*

*Date of Judgment: 14/03/2022*

**AGATHO, J.:**

The background of this appeal is that, the prosecution alleged that on 15<sup>th</sup> July, 2020 about 19:45 hours at Muheza (Mbaramo) one Amedeus Donati (the Appellant) did have carnal knowledge of A K (for privacy referred to as the victim) a baby girl of 7 years. The Appellant was thus prosecuted before Muheza District Court with the offence of Rape contrary to Section 130 (1) (2) (e) and 131 (1) of the Penal Code [CAP 16 R.E 2002].

When the charge was read out and explained to the Appellant, he replied by saying it is true. The trial Court entered a plea of guilty and proceeded to convict and sentence him to serve 30 years imprisonment.

That decision aggrieved the Appellant who believed that the plea entered did not qualify to be of guilty and that brief facts from the prosecution side admitted by the accused person were imperfect and ambiguous. For that reason, the Appellant appealed to this Honourable Court outlining the following grounds of appeal:

- 1) That, the Trial Magistrate erred in law and in fact by convicting the Appellant on the facts of the case produced in Court without complying with the provision of Section 192 (1) (2) (3) of the Criminal Procedure Act.
- 2) That, it was wrong in law in treating it as a plea of guilty while the admitted facts were imperfect, ambiguous or unfinished.

- 3) That, the trial Magistrate erred in law and in fact by failing to notice that the Appellant's plea of guilty was a result of mistake of misapprehension and that was equivocal.
- 4) That, the trial magistrate erred in law and in fact for failure to consider the medical report PF3 a vital document to form part of the facts of the case was not shown before the Court.
- 5) That, the trial magistrate erred in law to convict the appellant on the danger sentence obviously greatest where the accused was unrepresented, was of limited education and does not speak the language of the Court.

The Appellant prayed that this Court be pleased to quash the conviction and set aside the sentence imposed and he be set at liberty.

When the appeal came for hearing the Appellant appeared in person while the Respondent enjoyed legal service from Ms. Regina Kayuni, State Attorney and they agreed to dispose this appeal by way of written submissions. Successfully, each party filed their submissions.

In support of the appeal, in supporting his appeal, the Appellant cited the provision of Section 360 (1) of the Criminal Procedure Act [Cap20 R.E. 2019] which prohibits appeals from plea of guilty. The above Section provides that;

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

The Appellant however referred the case of **Laurence Mpinga Vs. Republic [1983] T.L.R 166** which provides circumstances under which an appeal against a plea of guilty may be preferred and those are;

- 1) Where the plea was imperfect, ambiguous or unfinished.
- 2) Where a plea of guilty was a result of mistake or misapprehension.
- 3) Where the charge disclosed no offence known to law and
- 4) Where upon the admission of facts, the accused could not in law have been convicted of the offence charged.

It was also the Appellant's submission that the plea was recorded "IT IS TRUE" but the trial Magistrate did not indicate in the record/ proceedings as to which charge/offence he admitted. The Appellant also questioned the legality of the admitted facts alleging that he admitted an unknown charge. It was therefore the Appellant's view that the plea of guilty was equivocal.

The Appellant further submitted that the cautioned statement and the PF3 tendered in Court as exhibit were not part of the facts and were not read over. From the above submission, it was the Appellant's prayer to this honourable Court to allow the appeal, quash and set aside all proceedings, conviction, and sentence passed on the Appellant.

In fact, the Appeal is supported by the Respondent to the extent that the plea taken was equivocal plea contrary to the requirement of the law. The learned State Attorney submitted that when the charge was read over and explained to the Accused/ Appellant he replied it is true but his reply did not elaborate what he was agreeing. She referred to Section 228(2)

of the Criminal Procedure Act which requires that where the accused person 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 unless there appears to be sufficient cause to the contrary. She also referred the case of **Jelada Chuma Vs Republic, Criminal Appeal No. 114 of 2016** at page 5 where the case of **Republic Vs. Yonasani Egalu and others [1942] 9 EACA 65** was cited.

In that case it was held that;

*In any case in which conviction is likely to proceed on a plea of guilty, it is more desirable not only that every constituent of the charge should be explained to the accused but he should be required to admit or deny every constituent.*

It was therefore her contention that as per the trial Court records the appellant merely stated that it is true without admitting every constituent of the charge.

Regarding the admission of the exhibits, she submitted that the prosecution tendered a cautioned statement of the accused but

the same was not read out loudly before the court after its admission as in the case of **Robinson Mwanjisi and 3 others Vs. Republic, Criminal Appeal No. 154/194.**

Ms. Kayuni conceded for the appeal to be allowed and further prayed that the Court should order a fresh plea taking as it was ordered in the case of **Jelada Chuma Vs. Republic (supra).**

Indeed, what has been done by Ms. Kayuni (State Attorney) as the counsel for the respondent is what required in the eyes of law and to ensure effective administration of justice. It is the primary role of state attorneys and other Advocates as Judicial Officers to support justice. The counsel for the Respondent shared to this Court about the irregularities observed at the trial Court, this is what required as insisted in the case of **Joseph Magata Vs. Vodacom (T) Ltd, Civil Appeal No.220 of 2019 (unreported) Court Appeal** cited in the case of **Mohamed Iqbal v. Esrom M. Maryogo, Civil Application No. 141/01 of 2017 (unreported)**

*"We must emphasize that an advocate, in addition to being a professional, is also an officer of the court and plays a vital! Role in the administration of justice. An advocate is therefore expected to assist the Court in an appropriate manner in the administration of justice. Indeed, one of the important **characteristics of an advocate is openness in different ways to share to the court the relevant information or message which comes to his attention whether from his client or his colleagues concerning the handling of the case regardless of whether he has been requested by the court to do so or not.**"*

About this appeal, in the case of **Yohana John Vs. The Republic, Criminal Appeal No. 520 of 2017 Court of Appeal of Tanzania at Tabora** stated that,

*"As a result, on the face of record, the appellant's plea was ambiguous and could not lead the magistrate to record the plea of guilty and proceed to convict and sentence him; in lieu thereof, he was supposed to enter a plea of not guilty and order the appellant to stand trial".*



In this appeal five grounds of appeal were pleaded, however that of plea taking is fundamental. It disposes the appeal. There is no need to examine other grounds of appeal.

Without further ado, considering the parties' submissions, and having perused the records of the trial Court, it is crystal that a plea of guilty was incomplete because the appellant replied to the charge by saying "IT IS TRUE." Thus, this appeal qualifies to be allowed. Order for re trial is granted for the purpose of taking plea afresh before the trial Court immediately. While awaiting afresh plea taking the appellant shall remain in custody.

**DATED at TANGA this 14<sup>th</sup> Day of March 2022.**



**Date: 14/03/2022**

Coram: Hon. Dr. U. J. Agatho, J

Appellant: Ms. Tusa Mwaihesya, the Respondent's State Attorney

Respondent: Present

B/C: Zayumba

**Court:** Judgment delivered on this 14<sup>th</sup> day of March, 2022 in the presence of the Appellant, and Tusa Mwaihesya, the Respondent's State Attorney.



**U. J. AGATHO**  
**JUDGE**  
**14/03/2022**

**Court:** Right of Appeal fully explained.



**U. J. AGATHO**  
**JUDGE**  
**14/03/2022**