IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF BUKOBA
AT BUKOBA

CRIMINAL APPEAL NO. 08 OF 2022
(Originating from Criminal Case No. 172/2021 of Biharamulo District Court)

SAMSON JUMA.....APPELLANT

VERSUS

THE REPUBLIC.....RESPONDENT

JUDGMENT

29th August & 30th August 2022

Kilekamajenga, J.

The appellant was charged with the offence of rape contrary to **section 130(1)(2)(e) and 131(1) of the Penal Code, Cap. 16 RE 2019**. The charge against the appellant shows that, on 20th December 2021 at 9:00 hours at Kisumo Village within the District of Biharamulo in Kagera region, the appellant did have sexual intercourse with a girl of sixteen years. During the trial of the case, the appellant pleaded guilty and he was convicted and sentenced to serve thirty (30) years in prison. Thereafter, the appellant filed the instant appeal containing six grounds of appeal thus:

1. *That the plea of the accused person was unequivocal plea of guilty as the appellant was not conversant with Swahili language.*
2. *That the appellant being a lay person he (sic) was not capable of understanding the charge against him.*
3. *That the charge was not clearly explained to the appellant.*

4. *That the trial court erred in law by convicting the appellant based on his plea without the prosecution side prove their case.*
5. *That the charge sheet was not read over to the accused for the language he understands.*
6. *That the trial magistrate did not mention the section of the law that allow her to impose the sentence of thirty years imprisonment.*

In defending the appeal, the appellant urged the court to adopt the grounds of appeal and pardon him. The learned State Attorney, Mr. Amani Kyando objected the appeal arguing that the appellant was properly heard by the trial court. The charge was read to the appellant in the language that he understood and he entered a plea of guilty. The learned State Attorney insisted that the appeal has no merit because the appellant entered a plea of guilty. Furthermore, in the mitigation, the appellant prayed for a lenient sentence as it was his first time to commit the act. The counsel invited the court to consider the cases of **Feisal Hamidu@ Godian Godfrey v. Republic**, Criminal Appeal No. 51 of 2021, HC at Bukoba and **Michael Adrian Chaki v. R**, Criminal Appeal No. 399 of 2019, CAT at Dar es salaam (unreported).

In the rejoinder submission, the appellant urged the court to lower the sentence against him or else release him after considering his grounds of appeal.

In the instant case, as already stated, the appellant who was charged with raping a sixteen girl pleaded guilty to the charge prompting the trial court to enter conviction and sentence against him. Under **section 360(1) of the Criminal Procedure Act, Cap. 20 RE 2019** where an accused is convicted and sentenced based on a plea of guilty, he/she cannot challenge the decision of the trial court unless he/she intends to challenge the sentence entered against him/her. The section provides that:

> *'360 (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.'*

The procedure further requires that, the charge against an accused must be read and be explained in the language he/she may understand. Section 228(1)(2) of the Criminal Procedure Act, Cap. 20 RE 2019 provides that:

> *228.-(1) The substance of the charge shall be stated to the accused person by the court, and he shall be asked whether he admits or denies the truth of the charge.*
> *(2) 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 and pass sentence upon or make an order against him, unless there appears to be sufficient cause to the contrary.*

The procedure further demands that, after entering a plea of guilty which, under the law, must be unequivocal, the court must proceed to require the prosecution

to adduce the facts of the case. Thereafter, the accused must be required again to give a response on whether he/she admits the facts. The case of **Buhimila Mapembe v. R [1988] TLR 174**, expounded this principle of the law thus:

> *'(i) 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; (ii)* ***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.'*

In the instant case, the appellant, through the grounds of the appeal, is impugning the conviction and sentence entered by the trial court on the reason that, the charge was not explained to him in the language that he understood. He argued that, his plea was equivocal because the charge was read and explained in Swahili the language that he did not understand. The appellant's argument brought me to the proceedings of the trial court and found the following recording. The appellant was accused of committing the alleged rape on 20th December 2021 and he was arrested on 21st December 2021. On 23rd December 2021, the appellant was charged in court for the offence of rape. The proceedings show that, the charge was read over and explained to the appellant in the language he understood and he was asked to plead thereto. The appellant entered the following plea: '*Ni kweli nilifanya mapenzi na BISIA EZEKIEL tarehe*

20.12.2021' which was translated to mean *'it is true I did have sexual intercourse with BISIA EZEKIEL on 20.12.2021.'* Thereafter, the court entered a plea of guilty to the charge. In the case of **Raulence Mpinga v. R [1983] TLR 166** the court held that:

> *(i) An appeal against a conviction based on an unequivocal plea of guilty generally cannot be sustained, although an appeal against sentence may stand;*
>
> *(ii) an accused person who has been convicted by any court of an offence "on his own plea of guilty" may appeal against the conviction to a higher court on any of the following grounds:*
>
> > *1. that, even taking into consideration the 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 guilty;*
> >
> > *2. that he pleaded guilty as a result of **mistake or misapprehension**;*
> >
> > *3. that the charge laid at his door **disclosed no offence known to law**; and*
> >
> > *4. that upon the admitted facts he could not in law have been convicted of the offence charged.*

In the case of **Munisi Marko Nkya v. R [1989] TLR 59** the court went further observing that:

> *'An accused's plea should as near as possible be recorded as the accused says it. A plea of "It is true" without amplifications is unsatisfactory as it may not amount to an admission of every constituent element of the charge(s).'*

In the case at hand, the appellant's plea cannot be said to be equivocal because he even gave further explanation to show that he had sexual intercourse with the victim on 20th December 2021.

Furthermore, the facts constituting the offence were read to the appellant and his response was as follows: *'I admit all facts are true and correct.'* After the conviction, the appellant, in his mitigation, urged the court to impose a lenient sentence as it was his first time to commit such an act. To be precise, the appellant is recorded to have said *'I pray for leniency because it was my first time to do that act.'*

Based on the information contained in the proceedings of the trial court, I have no reason to doubt what the honourable trial magistrate recorded. The trial court could not have denied the appellant the right to interpretation if the appellant did not understood Swahili. In fact, the court could not have managed to proceed with the hearing of the case if the appellant did not understand Swahili as now alleged by the appellant. Before this court, the appellant posed as if he did not understood Swahili. He alleged to know Kirundi and not otherwise. After a brief conversation, it was evident that the appellant is using this defence as ploy to convince the court that he does not understand Swahili. In fact, he understands

Swahili and he can speak it without any problem. I find no merit in the appeal and hereby dismiss it. It is so ordered.

Dated at Bukoba this 30th Day of August 2022.

Ntemi N. Kilekamajenga
JUDGE
30/08/2020

Court:

Judgment delivered this 30th August 2022 in the presence of the appellant present in person and the learned State Attorney, Mr. Amani Kyando. Right of appeal explained.

Ntemi N. Kilekamajenga
JUDGE
30/08/2020