

**IN THE HIGH COURT OF TANZANIA**  
**IN THE DISTRICT REGISTRY OF SHINYANGA**  
**AT SHINYANGA**

**CRIMINAL APPEAL NO. 77 OF 2021**

**KABANZA LUNG'UDA.....APPLICANT**  
**VERSUS**  
**REPUBLIC.....RESPONDENT**

**[Appeal from the Decision of District Court of Shinyanga at Shinyanga.]**

**(Hon. C.S. Lang'au RM)**

**dated the 9<sup>th</sup> day of June, 2021**  
**in**  
**Criminal Case No. 53 of 2021**

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**JUDGMENT**

25<sup>th</sup> May & 24<sup>th</sup> August, 2022.

**S.M. KULITA, J.**

Kabanza Lung'uda, referred to as the Appellant in this appeal, was charged in the District Court of Shinyanga for Rape contrary to the provisions of section 130(1) and 2(e) and 131(1) of the Penal Code [Cap. 16 RE 2019]. It is in the particulars of offence that, on the 20<sup>th</sup> day of May, 2021 at Ichongo village in Shinyanga District, the appellant had sexual intercourse with one "ZE" a girl aged ten years old.

In a nutshell, the facts read by prosecution side provides that, the victim is a granddaughter of the appellant. On the material date, the grandmother had left the duo at home. The victim and the Appellant used to sleep in separate rooms. During the night while the grandmother was away, the appellant entered the victim's room, raped her and left thereafter.

As the victim started bleeding, on the following day, the appellant ordered her not to go to school. To hide the ordeal too, the appellant ordered the victim not to disclose what happened to her. On that date, things went well on the part of the appellant, according to the victim on another day he repeated the offence.

When the grandmother returned, the victim opted to disclose what had happened to her. On that account, the grandmother reported the matter to police. Thereafter the victim was examined and PF3 was filled. Consequently, the appellant was arrested, interrogated and charged as well. Following a plea of guilty, the appellant was convicted and sentenced accordingly. That was the 9<sup>th</sup> day of June, 2021.

Aggrieved with the decision, the appellant has now approached this court with six grounds of appeal which can be summarized as follows, **one**, it is contradictory on the alleged second day of commission of

offence that shows the offence was committed in the presence of the victim's grandmother, **two**, exhibits tendered were not fully explained and unlawfully tendered by the prosecutor, **three**, penetration as key element of rape was not determined, **four**, procedure of taking plea as per section 228(1) of the Criminal Procedure Act was not followed, **five**, arresting manner of the appellant contradicted the requirement of sections 13(1) to (3) of the Criminal Procedure Act, **six**, the appellant's plea was equivocal.

The Appeal was heard on 25<sup>th</sup> May, 2022. The Appellant appeared in person whereas the Respondent (Republic) had the service of Ms. Gloria Ndoni, learned State Attorney who resisted the appeal.

Submitting in support of the appeal, the appellant decided to adopt his grounds of appeal as his submission.

In reply Ms. Ndoni was of views that according to section 360(1)(2) of the Criminal Procedure Act (CPA) the appellant whose conviction and sentence was upon the plea of guilty he had made during trial, is precluded to appeal against conviction but sentence only, unless it is found that his plea was equivocal. Concerning the plea, the Counsel was of the views that, the same adhered to the dictates of section 228(1) of the CPA.

Concerning the exhibits she stated that, the same were tendered by prosecutor simply because on that date the case was for preliminary hearing and there was no way that, the witnesses could have tendered the same. She added that, as there at the trial court the same were fully explained to him, then no rights were infringed to the appellant.

In rejoinder the appellant stated that, his plea was equivocal as the police tortured him before he entered the court.

This was the end of both parties' submissions.

It is undisputed fact that, the law precludes the appellant to appeal against conviction if his plea is found to be unequivocal. On those circumstances, the appellant who is convicted on his own plea remains with only chance of appealing, it is against sentence. This is according to section 360 (1) of the CPA which provides; -

*"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".*

With regard to the position of the law above, my duty now is to determine whether the appellant's plea was equivocal at the trial court. I

have to start with it because it is the only thing that will determine whether this court should determine other grounds of appeal or not.

Section 228(1) and (2) of the CPA provides for the procedures on how unequivocal plea of the accused person should be taken down. The section provides;

*"(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".*

From the above quoted provisions of the law, the issue is whether, the trial court's records conform with it. I have gone through the trial court's records and found at page 1 of the typed proceedings that, the charge was ready over and fully explained in Swahili language to the appellant who replied to it as I hereunder quote;

*It is true I have sexual intercourse with the said girl*

*"ZE" it was into my house the girl is my granddaughter.*

From there, the records show that, the prosecutor read over the facts that form the offence the appellant was charged with. In nut shell, the facts, provides for the victim's age being 10 years old. That the appellant raped the victim on 20<sup>th</sup> and 22<sup>nd</sup> days of May, 2021. That the victim bleed thereafter the act. The victim reported to her grandmother as soon as she returned back home. That the victim was medically examined and the PF3 was filled. The PF3 discloses that the victim was raped and bruises were found in her private part. The appellant was arrested and confessed in his statement. The caution statement and the PF3 were tendered to court with no objection from the Appellant. The said exhibits were admitted and read out loud before the court.

From the said facts, the records show that, the appellant replied as follows;

*"All facts are true and correct and I have no objection on the exhibits tendered".*

It was from the above quoted proceedings, the trial court convicted the appellant on his own plea of guilty. From the foregone,

I am of settled mind that, the trial court adhered section 228(1)(2) of the CPA, hence the plea entered is unequivocal.

Consequently, the appellant is precluded from appealing against the decision of the trial court. On that account, I am not going to determine the rest of the appellant's grounds of appeal.

On that note, this **appeal is dismissed** for being unmeritorious. Thus, the trial court's conviction and sentence are hereby confirmed.



**S.M. KULITA**  
**JUDGE**  
**24/08/2022**

**DATED** at **SHINYANGA** this 24<sup>th</sup> day of August, 2022.



**S.M. KULITA**  
**JUDGE**  
**24/08/2022**