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

CRIMINAL APPEAL NO. 18 OF 2022
(Originating from Karagwe District Court in Criminal Case No. 234/2020)

LIVINUS CHRISZOSTOM.....APPELLANT

VERSUS

THE REPUBLIC.....RESPONDENT

JUDGMENT

06th September & 09th September 2022

Kilekamajenga, J.

The appellant was arraigned in the District Court of Karagwe for the offence of rape contrary to **section 130(1)(2)(e) and 131(1) of the Penal Code, Cap. 16 RE 2019**. The record shows that, the appellant had sexual intercourse with a girl aged 14 years on 19th Day of July 2020 at Chanika village within Karagwe District in Kagera Region. On 27th July 2020, the appellant appeared before the District Court to answer the charge against him. The charge was read over and explained to the appellant who, in turn, offered a plea of guilty stating that, 'it is true.' The facts of the case were adduced and the following exhibits were tendered: the appellant's cautioned statement, the appellant's extra judicial statement and a PF3 form tending to prove that the victim was raped. Thereafter, the trial court convicted and finally sentenced the appellant to serve thirty (30) years in prison.

The appellant preferred an appeal to this court with several grounds of appeal which are, however, haphazardly framed and therefore I do not find reason to reproduce them in this brief judgment. When the appellant appeared for hearing before this court, he simply urged the court to consider his grounds of appeal and set him at liberty.

On the other hand, the learned Senior State Attorney, Mr. Emmanuel Luvinga who appeared for the respondent objected the appeal arguing that, the appellant was convicted and sentenced based on his own plea of guilty. He averred that, during the trial, the charge was read over to the appellant and he pleaded guilty. Also, the facts of the case were read to the appellant and he admitted them. Therefore, the appellant was convicted based on an unequivocal plea. The counsel argued further that, under **section 360(1) of the Criminal Procedure Act, Cap. 20 RE 2022**, as long as the conviction was based on the appellant's plea of guilty, the appellant has no right to challenge the conviction. The appellant may only appeal against the sentence and not otherwise. The counsel referred the court to the case of **Joel Mwangambako v. Republic, Criminal Appeal No. 516 of 2017**, CAT at Mbeya (unreported). However, the counsel acknowledged a minor error in the proceedings of the trial court that, the exhibits in this case were read in court but before admission. He argued further that, even if the exhibits are expunged, the conviction against the appellant may still stand. He urged the court to dismiss the appeal.

When rejoining, the appellant alleged to have been forced to confess and that he admitted something which he did not know.

In this appeal, I am aware that, under **section 360(1) of the Criminal Procedure Act, Cap. 20 RE 2019,** the appellant who was convicted based on his plea of guilty cannot challenge the conviction but he may only appeal against the sentence. 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.'*

However, I have discovered some errors which might have vitiated the proceedings and conviction against the appellant. **First**, when the charge against the appellant was read, the appellant seemed to have said 'it is true'. Such a plea, depending on the circumstances of the case, may amount to an equivocal plea which may not support the conviction. The accused's plea must be coupled with some explanations to capture what the accused is admitting. This principle of the law was stated in the case of **Munisi Marko Nkya v. R [1989] TLR 59** 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, it was necessary for the appellant to explain whether he was admitting that he had sexual intercourse with a girl of fourteen years old as alleged. The mere words 'it is true' may have many connotations. This court is left with doubts on whether the appellant was admitting that, he comes from Chanika village or he had sexual intercourse with the victim; or whether he admitted his name to be Livinus Chrizostom. It is always necessary to require the accused to clarify the plea. This principle of the law derives from **Section 228(1)(2) of the Criminal Procedure Act, Cap. 20 RE 2019** which 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 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.'*

Second, the facts of the case were adduced and the appellant's cautioned statement, appellant's extra-judicial statement and PF3 form were tendered. The trial court, alas, jumped again to another procedure of preliminary hearing and cited **section 192 of the Criminal Procedure Act, Cap. 20 RE 2019** to justify the procedure. The trial magistrate prepared the memorandum of facts that were not in dispute. At the end, he indicated that the tendered exhibits were read in court and asked whether the appellant had any objection. The appellant did not object the admission of the exhibits and the trial court admitted them. Therefore, the exhibits were read in court before being admitted something which is contrary to the practice because the reading of the exhibits must be read aloud in court after admission.

Thereafter, the appellant signed. The trial court convicted the appellant and went straight to the aggravating and mitigating factors. The trial court again issued bail conditions to the appellant who, however, did not have any surety and the case was scheduled for sentence on the same day. Throughout the proceedings of the trial court, there is nothing to show whether the appellant was drawn to facts of the case and thereafter asked to admit or deny them. In other words,

the appellant had no opportunity to admit the facts of case narrated after the alleged plea of guilty. By not recording the admission of the appellant after reading the facts of the case, the trial court violated the already established principle of the law stated in the case of **Alfred Boman v. Republic** [2013] TLR 27, where the Court of Appeal of Tanzania insisted the above procedure that:

> *'It is important that when a case is called on for preliminary hearing, a charge must be read over to the accused person who must be asked to plea thereto in the language he understands. If the court finds that the accused plea is unequivocal, the prosecution shall proceed to narrate the facts of the case forming all the ingredients of the offence with which the accused person is charged. Thereafter, the accused should be required to admit or deny every such ingredient.'*

Based on the above analysis, I find merit in the appeal and hereby allow it. The appellant should be discharged from prison unless held for other lawful reasons. Order accordingly.

DATED at **BUKOBA** this 09th Day of September, 2022.

Ntemi N. Kilekamajenga.
JUDGE
09/09/2022

Court:

Judgment delivered this 09th September 2022 in the presence of the learned Senior State Attorney, Mr. Emmanuel Luvinga and the appellant present in person. Right of appeal explained.

Ntemi N. Kilekamajenga.
JUDGE
09/09/2022