

**IN THE HIGH COURT OF TANZANIA**

**MTWARA DISTRICT REGISTRY**

**AT MTWARA**

**CRIMINAL APPEAL CASE NO 14 OF 2022**

*(Originating from LINDI District Court at LINDI in Criminal Case No 72 of 2021)*

**SELEMANI AMRI MATOLA ..... APPELLANT**

***VERSUS***

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

**JUDGEMENT**

*10/08/2022 & 10/10/2022*

**LALTAIKA, J.**

The appellant herein **SELEMANI AMRI MATOLA** was arraigned in the District Court of Lindi at Lindi where he was charged with Rape contrary to Section 130(1) and (2)(e) of the Penal Code Cap 16 RE 2019. Consequently, he was sentenced to life imprisonment and ordered to pay the victim a compensation of TZS 3,000,000 (Three Million Tanzania Shillings.)

According to a copy of the charge sheet available in the court records, on the 17<sup>th</sup> day of December 2021 at Ruo Village in the District and Region of Lindi, the appellant had carnal knowledge with one DZZ (not her real name) a girl of eight years old.

Aggrieved, the appellant has dashed into this court with a five-point memorandum of appeal. For reasons that will become apparent shortly, I choose not to reproduce the grounds of appeal.

When the appeal was called on for hearing on 10/8/202, the appellant appeared in person while the respondent Republic was represented by Mr. Enosh Kigoryo, learned State Attorney.

The appellant vehemently protested the life imprisonment sentence meted against him. However, not being learned in law, he had nothing to add to his petition of appeal. Instead, he prayed that the learned State Attorney proceeds and he would, if the need arises, reply in rejoinder.

The learned State Attorney declared on the outset that he objected the appeal. It is Mr. Kigoryo's submission that when the appellant was arraigned in court on 23/12/2021 the charge was read over to him and he pleaded guilty. Later, the statement of the offence was read over to him and he also agreed. The court reached the decision of convicting and sentencing him as per the law.

The learned counsel submitted further that section 360(1) of the Criminal Procedure Act Cap 20 RE 2019 does not allow appeals based on own plea of guilty. However, the learned counsel contended, one can appeal against sentence that is the legality of the same. To buttress his argument, the learned State Attorney referred this court to the landmark case of **Laurence Mpinga v. R. [1983] TLR 166.**

Mr. Kigoryo averred further that he had gone through the five grounds of appeal and found that they all centered on the appellant's complaint challenging the trial court for convicting him based on an equivocal plea.

Mr. Kigoryo submitted that going through the statement and particulars of the charge, it was obvious that the same had sufficiently notified the appellant on the charge or offence he was facing before the court. As a result, the learned counsel averred, the appellant agreed that the charge sheet contained the offence that he had committed.

Mr. Kigoryo insisted that as it appears on page 2 to 4 of the trial court's proceedings, the statement read over and explained to the appellant disclosed how he committed the offence as well as ingredients of the offence. To that end, the learned State Attorney prayed that all the 5 grounds be dismissed as well as the appeal in its entirety.

In rejoinder, the appellant insisted that he was innocent. He stated that he pleaded guilty because the court had threatened him. He lamented that when he was asked by the magistrate whether he had committed the offence and he indicated disagreement; the magistrate started rebuking him.

It was on the 23<sup>rd</sup> of December, the appellant narrated, when he was arraigned in court, convicted and sentenced on the same day. He feels that there was a hurry to ensure that he is convicted and sentenced. He exclaimed that the sentence to spend the rest of his life in prison came as a big shock.

The appellant narrated that he and his wife Sumoe Yusufu got married in 2020 when she already had 4 children from her first marriage, two from her second marriage, and one child from her third husband. The appellant was the fourth husband with whom he had one child, a baby girl. It is the appellant's submission that his wife maintains close contact with one of her ex-husbands.

The appellant narrated further that on the fateful day, a fight ensued between him and his wife. She took a piece of wood and threw it to him in return he hit her with his hands and then she ran to her brother called Amuri Yusufu Ngololo but received no help. She decided to run to her former husband with whom she had two children. The former husband reported to the village leaders that the appellant had raped his wife.

A statement was written to that effect and the ex-husband took the appellant along with the statement to Mingoyo Police Station where he was locked up. On the 22.12.2021 he was transferred to Lindi Central Police Station and on the 23.12.2021 he was arraigned in court, convicted and sentenced on the same day.

I have dispassionately considered submissions by both parties. I must admit that this is one of those cases that leave a lot to be desired when it comes to the weight, and seriousness, we put in criminal law especially when curtailment of liberty of a person is at stake. Life imprisonment is not a sentence that can be pronounced lightly. All precautions must be taken to ensure that the right to innocence until proven guilty is maintained. The rationale for holding the standard of proof for criminal cases so high namely

beyond reasonable doubt as opposed to civil cases where the standard is merely a balance of probability is because consequences of criminal machinery go to the very root of one's liberty and, for capital offences may take one's life away. It is in this backdrop that a magistrate or judge seating in a criminal court must uphold this standard of proof very high.

When an accused is arraigned in court, he or she should not only feel proud for escaping mob justice but also confidently see the wheels of justice moving swiftly without drifting away from its paved and well lighted road. This confidence and inner peace are what distinguishes a court of law from other fora that purport to dispense justice. As frequently stated, a court is a temple of justice.

With the above preambular account, I am inclined to decide the merit of this appeal. I will focus my deliberation on the only ground of appeal argued by the learned State Attorney namely that the plea was equivocal. I agree with Mr. Kigoryo that the five-points petition of appeal filed by the appellant can neatly be reduced into one.

The Court of Appeal of Tanzania in **Josephat James v. Republic** Criminal Appeal No. 316 of 2010 CAT, Arusha (unreported) proffered circumstances under which conviction based on one's plea of guilty can be appealed against. They include where the appellant did not appreciate the nature of the charge or did not intend to admit he was guilty of it. In my opinion this is a typical of such cases. I say so for two reasons: one, it defeats logic to imagine that anyone in their right mind would plead guilty to an offence knowing fully that life imprisonment is imposable as a sentence.

Two; while the prosecution alleged that the appellant did have carnal knowledge of an eight-year-old, the appellant has been consistent that he had a fight with his wife, and he was accused of raping her. To that end, I am fortified that the appeal is not misplaced as contended by the learned State Attorney. That said, it is my finding that the plea was equivocal.

My next question is, what is the way forward? I am guided by the decision of the defunct Court of Appeal for East Africa, in **Fatehali vs. The Republic** (1966) EA 343 thus

*"In general 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 insufficiency 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 to blame, it does not necessarily follow that a retrial should be ordered; each case must depend on its own facts and circumstances and an order for retrial should only be made where the interest of justice require it."*

I have given some thought to the instant matter and I do not see it just to order retrial. The allegations leveled against the appellants have received very little if any investigation at all. Apart from a copy of the PF3 which not only is the name of the victim misspelt, but also full of annotations by way of a correction fluid making it unworthy of consideration as a serious court document. The file is devoid of very basic documents to link the appellant with the alleged offence thus justifying his appearance in court in the first place.

In the light of the above observation, an order of retrial would be tantamount to handing over an open cheque to the prosecution to write down whatever amount they wish to withdraw. They would be able to remedy the defects that I have highlighted and, while doing so, put the rights of the appellant in jeopardy.

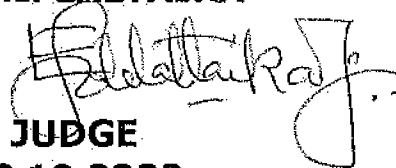
The above position was taken by the Court of Appeal of Tanzania in the case of **Simon Kitalika & 2 Others vs The Republic** Criminal Appeal No 468 of 2016 CAT Iringa (unreported) where the Apex Court stated:

*"We are of the view that to require the appellants to stand trial again would be unfair under the circumstances, since it would accord the respondent an opportunity to lead evidence which did not feature at the original trial. A retrial may also provide an opportunity for the prosecution to fill the gaps in evidence and amend the charges, a possibility also not discounted by the learned State Attorney appearing when submitting before this court, which is not the aim for an order for retrial."*

Premised on the above, I hereby allow the appeal. I quash the conviction, set aside the sentences of life imprisonment and order for compensation of TZS 3,000,000 (Three Million Shillings). Further, I order that SELEMANI AMRI MATOLA be released from prison forthwith unless he is being held for another lawful cause(s).

It is so ordered.

**E.I. LALTAIKA**



**JUDGE**

**10.10.2022**

**Court:**

This Judgment is delivered under my hand and the seal of this Court on this 10<sup>th</sup> day of October 2022 in the presence of Mr. Wilbroad Ndunguru, learned Senior State Attorney and appellant who has appeared unrepresented.



**E. I. LALTAIKA**

Handwritten signature of E. I. Laltaika in black ink.

**JUDGE**

**10.10.2022**

**Court:**

The right to appeal to the Court of Appeal of Tanzania is fully explained.



**E. I. LALTAIKA**

Handwritten signature of E. I. Laltaika in black ink.

**JUDGE**

**10.10.2022**