

**IN THE UNITED REPUBLIC OF TANZANIA
JUDICIARY**

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

DC. CRIMINAL APPEAL NO.105 OF 2021

DANIEL KASORO.....APPELLANT

VERSUS

THE REPUBLIC.....RESPONDENT

**(Appeal from the decision of the District Court of Kalambo
in Criminal Case No. 137 of 2021)**

JUDGMENT

Date of Last Order: 19/09/2022

Date of Judgement: 25/10/2022

NDUNGURU, J:

At Kalambo District Court (henceforth the District Trial Court), an accused person, now appellant namely Daniel Kasoro was charged with one offence namely rape contrary to **Section 130 (1) and (2) (e) and section 131 (3)** of the Penal Code, Cap. 16 RE 2019.

According to the records of this appeal, he was found guilty of the said offence, convicted on his own plea of guilty and subsequently he was sentenced to serve life imprisonment in respect of such count. However, he

aggrieved by the conviction and sentence imposed by the District Trial Court, hence this appeal.

In his petition of appeal, the appellant fielded six (6) grounds of appeal as hereunder quoted; -

1. That he did not commit the serious offence as claimed by the prosecution side,

2. That, the prosecution side failed to prove the charge against the appellant beyond all reasonable doubts as required by law.

3. That the trial court erred in law point and fact by convicting and sentence the appellant relying on plea of guilty for the appellant which was under the charge which was not treated according to law was full of ambiguous and equivocal plea.

4. That, the trial erred in law point and fact to convict and sentence the appellant relying on plea of guilty for the appellant while failed to note out that the appellant was denied an opportunity to say or dispute or add anything relevant to fact something which vitiated the whole process to be nullity.

5. That, the trial court total wrongly admitted the exhibit P1 (cautioned statement) which were

tendered before the court without considering that the same were prepared and recorded illegally.

6. That it is obviously that the case against the appellant was fabricated while did not commit the said offence as alleged by the prosecution side.

Having read his grounds of appeal I found, in brief his complaint hinge on one ground that he was convicted on equivocal plea of guilty.

When the appeal was called on for hearing, the appellant appeared in person; whereas, the respondent Republic had the legal services of Ms. Marietha Magutta, the learned state attorney to argue this appeal.

Arguing in support of the appeal, the appellant submitted that he did not plead guilty to the charge as found by the trial court. Further he said he was imprisoned by the court which sided to the prosecution without noting that the plea of guilty was equivocal, thus he prayed for the appeal be allowed.

In reply, Ms. Magutta, resisted the appeal by the appellant and went on submitting that **Section 360 (1) of the Criminal Procedure Act, CAP. 20** (henceforth the CPA) does not allow appeal on the offence where the accused pleaded guilty. She referred also the case of **Laurent Mpinga** [1983] TLR which provides circumstances in which the person can appeal

even when convicted on plea. Such circumstances are when the charge was defective, when the plea is ambiguous or when the facts are not understood and when the sentence is not proper in law.

Further, Ms Magutta submitted that the plea offered was not ambiguous, when the facts were read to him, he admitted all the facts to be true. It is when he was convicted and sentenced. She said all the grounds raised are devoid of merit. She referred the case of **Joel Mwangambako vs Republic**, Criminal Appeal No. 516 of 2017, CAT, unreported at pg. 13 the court observed that when the plea is unequivocal the prosecution has no duty to prove the case. Thus, she prayed for the dismissal of the appeal.

The appellant in rejoinder, he prayed his grounds of appeal be considered.

I have thoroughly gone through the records of the District Court. I have as well read between the lines the appellants' grounds of complaints, his submission and that of Ms. Magutta

First and foremost, as general rule, as rightly submitted by Ms. Magutta, a person convicted of his own plea of guilty ordinarily, has no room in law, to appeal against such conviction of the offence to which he pleaded guilty. This is provided under **section 360(1)** of the Criminal

Procedure Act, Cap 20 (henceforth the CPA). The said **subsection (1) of section 360** of the CPA provides and I quoted as follows;

"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 above statutory position has been upheld in a number of decided cases by this court as well by the Court of Appeal. There is exception to that general rule. There are instances whereby a person convicted of his own plea of guilty can appeal against the legality or extent of the custodial sentence imposed upon him. That's one. Two, he can as well appeal against a conviction which was founded on equivocal plea of guilty. That position is fortified by the decision in the case of **Juma Tumbiliya & Two Others versus Republic**: [1998] TLR. 139 whereby it was *inter alia* held that:

"According to S. 360 of the Criminal Procedure Act 1985 an appeal against conviction upon a plea of guilty can only be competent after determining that the plea of guilty was not unequivocal"

Having such legal positions, I find it desirable to examine closely what transpired in the District Court as reflected on the record. On 16.11.2021 when the charge was read over and explained to the accused who was asked to plead his plea was:

*Accused – "Ni kweli nilifanya mapenzi na Enica
Sikomele bila ridhaa yake"*

The trial court entered as a plea of guilty to the charge.

Thereafter, Public prosecutor read over the facts of the case and the appellant was asked to plead. The District Court Magistrate recorded the appellant plea to the facts as hereunder quoted; -

*Accused: I admit all facts as adduced by the
prosecutor as true and correct.*

I find such plea was unequivocal one.

During narration of facts of the offence by public prosecutor appellant's cautioned statement, extra judicial statement and PF3 also were admitted in court and marked as exhibit P1, P2 and P3 respectively. I find it prudent to reproduce the facts/proceedings before the trial court as hereunder quoted: -

FACTS OF THE CASE:

That the accused is Daniel Kasoro, 21 years, resident of Kanyarakata village, within Kalambo District in Rukwa Region, peasant and Christian.

That between 06th and 09th day of November 2021 accused person was at Mnyele village within Kalambo District in Rukwa Region.

That while was at Mnyele village on the material date, accused did have sexual intercourse with one Enica d/o Sikombe a girl aged 4 years without her consent.

That the accused person was arrested and brought before Matai Police Station.

That while interrogated by police No. G.3712 D/CPL Casto he consents to commit the offence.

That accused also brought before justice of peace on 11/11/2021 for extra judicial statement where he also consents to do the offence.

That the victim was also brought at Matai Health Centre on 11/11/2021 for medical examination and she found that she was raped and

she got PF3 from Matai Police Station and filled by the doctor.

That accused person was brought before this court on 16/11/2021 and when charge sheet read before him, he pleaded guilty to his offence.

That we pray cautioned statement, extra judicial statement and PF3 to be admitted in court as exhibit if there no any objection from accused person.

That is all.

**TEMU
RM
16.11.2021**

Accused: *I have no objection*

COURT:

- (a) Cautioned statement is admitted as exhibit P1.*
- (b) Extra judicial statement is admitted as exhibit P2.*
- (c) PF3 is admitted as exhibit P3.*

COURT: *Accused is asked on whether he admit all facts adduced by the prosecutor.*

Accused: *I admit all facts as adduced by the prosecutor as true and correct.*

The trial court proceeded to convict the appellant as hereby below quoted:-

"COURT FINDING"

From facts adduced and admitted by accused person, this court find the accused person namely Daniel Kasoro guilty for the offence of rape contrary to section 130 (1) and (2) (e) and 131 (3) of the Penal Code, Cap 16 RE 2019. He is convicted through his plea of guilty.

TEMU

RM

16.11.2021

From the facts narrated to the appellant and his reply, the question is whether the present appellant was convicted according to law? For my part, I have no hesitation in answering in the affirmative. The appellant was charged of one count as stated herein above namely rape contrary to **section 130 (1) and (2) (e) and section 131(3)** of the Penal Code CAP. 16 RE 2019. The appellant having pleaded guilty in respect of the

offence, the District Court Magistrate convicted him on his own plea of guilty. With that view, I find the appellant was properly convicted.

The law is clear as regards conviction entered based on the plea of guilty. The provision of **section 228 (2) of the CPA**, provides as follows;

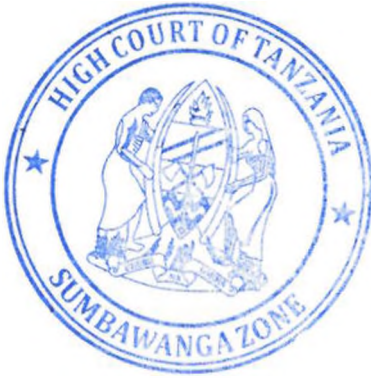
"If the accused person admits the truth of the charge, his admission shall be recorded as nearly as possible in the words he uses and the magistrate shall convict him and pass sentence upon or make an order against him, unless there appears to be sufficient cause to the contrary" [Underline is mine]

The above provision is very clear; it reveals that before passing sentence against an accused person who has been found guilty on his own plea of guilty, the court must be satisfied that the accused plea of guilty is unequivocal one.

With respect, I have not found any irregularity on face of trial court proceedings.

I therefore refrain from interfering the trial court proceedings, conviction as well the sentence imposed on the appellant. In fine the appeal by the appellant has no merit, the same is dismissed.

It is accordingly ordered.




D.B. NDUNGURU
JUDGE
25.10.2022

ORIGINAL