

**IN THE UNITED REPUBLIC OF TANZANIA  
JUDICIARY**

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

**DC. CRIMINAL APPEAL NO.61 OF 2021**

**ERENEST THOMAS.....APPELLANT**

**VERSUS**

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

(Appeal from the decision of the District Court of Kalambo  
in Criminal Case No. 80 of 2021)

**JUDGMENT**

***Date of Last Order: 01/11/2022***

***Date of Judgment: 07/12/2022***

**NDUNGURU, J:**

At Kalambo District Court (henceforth the District Trial Court), an accused person, now appellant namely Erenest Thomas was charged with two counts, one count with regard the offence of abduction contrary to section 133 and second count of rape contrary to **Section 130 (1) and (2) (e) and 131 (1)** both of the Penal Code, Cap. 16 RE 2019.

According to the records of this appeal, he was found guilty of the said offences, convicted on his own plea of guilty and subsequently he was sentenced to serve five (5) years in jail for the first count and for the

second to serve life imprisonment in jail which were to run concurrently. However, he was 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 established 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 magistrate court erred in law point and fact by convicting the appellant relying on plea of guilty only and inflict harsh punishment immediately, while mis observed that the charge against the appellant was not read over twice and explained correctly in order to prove if the appellant was understanding what he pleaded.*

Having read his grounds of appeal I found, in brief his complaint hinges 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 Mr. Kabengula, the learned state attorney to argue this appeal.

Arguing in support of the appeal, the appellant prayed for the court to adopt his grounds of appeal, thus he prayed for the appeal be allowed.

In reply, Mr. Kabengula, resisted the appeal by the appellant and went on submitting that the prosecution had no need to call witnesses to prove the charge because the appellant pleaded guilty when the charge was read to him. That following his plea the facts were read and the appellant admitted all the facts to be correct. The court was satisfied that the plea was unequivocal. The facts adduced explained the way the offence was committed; thus, the appellant understood the charge. He

prayed for the appeal be dismissed as the sentence meted to him is statutory and legal.

In rejoinder, the appellant submitted that it was his first time to appear in court and he did not know what was taking place.

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 Mr. Kabengula.

First and foremost, as general rule, 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, 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 Trial 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:

For the first count:

*Accused – "Ni kweli nilimchukua Amina Namfukwe bila ridhaa ya wazazi"*

For the second count:

*Accused – "Ni kweli nilifanya mapenzi na Amina Namfukwe"*

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 facts narrated to the appellant are as reproduced herein below:

*That complainant is the United Republic of Tanzania.*

*That accused person is Erenest Thomas, 19 years Fipa peasant resident of Katazi village within Kalambo District in Rukwa Region.*

*That on 29/05/2021 around 14:00 hours accused person was at Katazi village.*

*That while he was at Katavi on 29/05/2021 accused did take away one Amina Namfukwe a girl aged 14 years took her away to Ninga village with the intent to marry Amina Namfukwe*

*That on 29/05/2021 while he was at Ninga villahe accused did sexual intercourse with that girl Amina d/o Namfukwe of 14 years of age.*

*That accused was arrested and took to Mwimbi police post and when interrogated by police officer WP 7613 PC Rachel accused confessed to did the offence of took one Amina d/o Namfukwe as his wife and did sexual intercourse with her.*

*That on 07/06/2021 accused arraigned before this court to answer his charge sheet where he pleaded not guilty to his*

*offence and today 10/06/2021 when the charge sheet was substituted and read over before him, accused pleaded guilty to his all two counts*

*Your honour, I pray to tender the caution statement of accused person as exhibit.*

The District Court Magistrate recorded the appellant plea to the facts as hereunder quoted; -

*Accused: Your honour, all facts are true and I admit them.*

During narration of facts of the offence by public prosecutor appellant's cautioned statement was admitted in court and marked as exhibit P1.

Upon admission of facts the District Trial Court, then the District Court Magistrate proceeded to convict the appellant on the following words and I quote:

***"COURT FINDING"***

*From facts adduced by the prosecution and admitted by accused person, namely Erenest Thomas this court find with guilty with the offences of abduction contrary to section 133 of the Penal*

*Code, Cap 16 RE 2019 and rape contrary to section 130 (1) and (2) (e) and 131 (1) of the Penal Code, Cap 16 RE 2019. He is convicted through his plea of guilty.*

**TEMU**

**RM**

**10.06.2021**

From the facts narrated to the appellant and his reply, the question is whether the present appellant was convicted according to law? to my part, I have no hesitation in answering in the affirmative. The appellant was charged of the two counts as stated herein above namely abduction contrary to section 133 and rape contrary to **section 130 (1) and (2) (e) and section 131(3)** both of the Penal Code CAP. 16 RE 2019. The appellant having pleaded guilty in respect of the offences, the District Court Magistrate convicted him on his own plea of guilty. With that view, I find the appellant was properly convicted. The trial court's record is quite clear that on 07/06/2021 when the case came for the first date, when the charge was read and explained to him the appellant pleaded not guilty the case was adjourned to the next date for preliminary hearing. On 10/06/2021 the charge was read to the appellant who pleaded guilty thereto. If the assertion that never intended to plead guilty why couldn't he



maintain his former plea of not guilty. What made him to change the plea. That being what happened I am of the firm view that the plea of guilty entered by the appellant was unequivocal and had no any ambiguity. See **Laurent Mpinga Vs. Republic** [1983] TLR 24.

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" .*

*[Emphasis 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 any 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*  
**D.B. NDUNGURU**

**JUDGE**

**07.12.2022**