

**IN THE UNITED REPUBLIC OF TANZANIA  
JUDICIARY  
IN THE HIGH COURT OF TANZANIA  
SUMBAWANGA DISTRICT REGISTRY  
AT SUMBAWANGA**

**DC CRIMINAL APPEAL NO. 39 OF 2020**

*(Originating from Criminal Case No. 75 of 2020 District Court of Kalambo  
at Matai)*

**CLEMENT S/O SALAM ..... APPELLANT**

**VERSUS**

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

**JUDGEMENT**

*Date of last Order: 25/12/2022  
Date of Judgment: 01/04/2022*

**NDUNGURU, J.**

The appellant, clemet s/o Salama was convicted and sentenced to thirty years of two count of rape contrary to **section 130(1)(2)(e), 131(1) of the Penal Code Cap 16 RE 2019, and Section 60 A (30) of the Education Act Cap 353 RE 2002 are Amended by (the written Laws Amendment) Act No. 2 of 2016.**

The appellant was argued with the decision of the trial court **[Kalambo District Court Hon. Rugemalira SRM]** and appellant to thus court against both conviction and sentence. The appellant filed four

grounds of Appeal and four additional ground of Appeal making a total of eight grounds of Appeal. The grounds are as hereunder;

- 1) That, the trial Magistrate erred in law and fact to refer to the facts narrated as per charge sheet.***
- 2) That, the trial magistrate misdirected himself in trialing an equivocal plea as that of unequivocal the plea was ambiguous.***
- 3) That the appellant was not cautioned on the outcome of plea nor the basic rights at every stage of the case.***
- 4) That, when the charge was read over the appellant did not understand the charge against him and to ascertain what amount to the plea.***

Additional grounds are as here below;

- 1. That, the trial court erred in law and fact for failure to absence that the offence with the appellant was charged was a serious one and need full trial.***
- 2. That, appellant was not given a chance of either adding or asking anything, and exhibit P1 was not even read out after it was admitted.***

***3. That, there was no proper procedure in recording plea of guilty.***

***4. That. Appellant did not convict the said offence. He prays the appeal be allowed, re trial be ordered in the interest of justice, conviction and sentence be quashed and set aside.***

During the appeal hearing the appellant was unrepresented, while Ms. Mwabeza represented the Republic. The appellant had nothing to say during the appeal hearing, except prays that appeal be allowed.

Ms. Mwabeza for Republic submitted that, he support they conviction and sentence imprison by the trial court the eight grounds are almost similar, when the charge was read to the appellant he plead guilty to both counts, rape and impregnating school girl but **Section 360(1) of the Criminal Procedure Act RE. 2019** does not allow appeal in the conviction entered the sentence imposed on plea of guilty and in the present appeal the appellant is appealing against conviction and not sentence. The learned State Attorney referred this court to the decision in the case of **Laurent Mpanga V. Republic [1983] TLR No. 186.**

The plea of ignorance of law made by the appellant in the present appeal is not a defense as part **9 of the Penal Code Cap 16 RE.**

**2019.** Ms. Mwabeza went further that the appellant understand the charge against him, his plea was not ambiguities, the sentence imposed was in accordance to the law. His prayer of Appeal be dismissed for lack of merits.

Having consolidated the humble argument of both, the Appellant the Respondent, let me briefly narrates the facts.

On 16<sup>th</sup> day of July 2020, when the appellant (accused) was first brought before the trial court, the charges on the charge sheet one read and explained on the appellant he pleaded guilty to both counts, the plea of guilty was actually recorded by the trial court, the facts of the case were narrated by the Public Prosecutor, the **PF3** of the victim (**exhibit P<sup>2</sup>**) was tendered and was admitted without objection.

However, the extra Judicial statement was recorded before the justice of pace it was in admitted in court (**Exhibit P3**) without objection from the appellant. Thereafter, the trial court read again the facts narrated to the accused person and admitted all the facts. Conviction on the two counts was entered, previews record and mitigating factors were all recorded, and sentence of thirty years imprisonment for each count was entered and are ordered to run concurrently. This is what has transpired in the record of the trial court.

Now, the appellant knocked the door of this court and his main complaints we stipulated in the eight grounds of Appeal. The first ground of appeal, the complaint is that the trial magistrate erred in and fact to refer to the narrated facts as per charge sheet. The essence of criminal process is a charge sheet. In the case of **Sali Lilo V. Republic Criminal Appeal No. 43 of 2013 (CAT – Tabora)** (Unreported), the CAT had these words with regard to the charge sheet

*"Held .... We take this opportunity to remind the trial courts to take whence of the observation made is the case of **Mohamed Kanmgo V. Republic [1980] TLR No. 279** that ..... "While it is the duty of the prosecutions to file charge correctly, those who are presiding over criminal trials should, at the commencement of the hearing make it a habit of perusing the charge as a matter of routine to satisfy themselves that charged is laid correctly and if not, to require it to be arranged accordingly.."*

The rationale of narrations of facts from the charge sheet took its foundation to the **fair trial and principle of Natural justice**, the accused must understand the content of the charge in the case of **Mussa Mwaikunda V. Republic [2006] TLR No. 387** CAT Held that,

*".... The minimum standard which must be complied with for an accused to undergo for trial are (i) He must understand the nature of the charge and this can be achieved if the charge discloses the essential element of the offence charged (ii) That he must pleas to the charge and exercise the right to challenge it. (iii) He must understand the .... Of the proceedings to be an inquiry into whether or not he committed the alleged offence (iv) He must follow the course of the proceedings (v) He must understand the substantial effect if any evidence that maybe giver ageists him (v) That he must make defence or answer to the charge..."*

See also the case of **Uganda Haji Jamal (1964) EA 2019. Rojdi s/o Lalegozi & 2 others V. Republic Criminal Appeal No. 141 of 2009 (CAT) Tabora (unreported). Kabula d/o Luhende V. Republic Criminal Appeal No. 281 of 2014 (CAT) Tabora (Unreported).**

Apart from the decision of the court, we are bound to narrates the facts from the charges sheet as mandatory requirement under S. 228 of the Criminal Procedure Act in case of plea of guilty is concerned. The same was emphasized Under **Section 210(3), and 192(3)** oath of the

Criminal Procedure Act Cap. 20 RE 19. The first ground dismissed for lack of merits.

In the 2<sup>nd</sup> ground, the issues raised it whether the appellant's plea before the trial court are unequivocal. It is a common practice that once the accused is first brought before the court of law, charged must be read and explained to him in the language he understand; he must be asked if he admits the offence or not the accused reply must be recorded immediately as soon as possible. In the case of **Kibori Ramadhani V. Republic [1980] TLR 136** ... it was well settled that *the substance of the charge shall be stated to the accused person by the court and shall be asked whether readmits or denies the content of the charge.*

See the case of **Buhimila Mapembe V. Republic [1988] TLR No. 174**. In another case of **Republic V. Tilu Petro [1998] TLR No. 395 High Court Tabora**. It was settled that;

*"...Whether in a proper charge an accused as plead guilty, the prosecution law be called upon to adduce facts only in presence of the accused, who is then required to admit them, the law does not allow adductions of facts in the absence of the accused and plea of guilt cannot be implied but must be express...."*



In order for the pleas of guilty to be valid to purpose of convictions without trial **Under Section 228(2) Criminal Procedure Act** it must met conviction set out by the CAT is the case of **Michael Adrian Chaki V. Republic Criminal Appeal No. 399 of 2017 (Unreported)**. For an unequivocal plea of guilty to be valid the following conditions must exist.

- 1. The appellant must be arranged on a proper charge. That is to say, the offence section and papules thereof must be properly framed and must explicitly disclose the offence Known to law.*
- 2. The court must satisfy itself without any doubt and must be clear in its mind that an accused fully comprehends what he is actually faced with, otherwise injustice may result.*
- 3. When an accused is called upon to plead to the charged, the charge is staled and fully explained to him before he is asked to state whether he admits or denies each and every particular ingredient of the offence. This in terms of Section 228(1) of the Criminal Procedure Act Cap 20 RE 2019.*
- 4. The facts adduced after recording a plea of guilty should disclose and establish all the element of the offence charged.*



*5. The accused must be asked to plead and must actually plea and guilty to each and every ingredient of the offence charge and the same must be properly recorded and must be clear.*

*6. Before convictions a plea of guilty is entered, the court must satisfy itself without any doubt that the facts adduced disclose or establish all the elements of the offence charged .....*”

See also the decision on similar situation in the case of **Rex V. Folder (1923) 2KB 400, Laurab Mpanga V. Republic [1983) TCR No. 166, and Kalos Punda V. Republic Criminal Appeal No 153 of 2005 (Unreported)**, all discussing the same point. The accused plea was unequivocal, this ground her no merits it is dismissed for lack of merit.

In the 3<sup>rd</sup> ground, the appellant was not cautioned on the outcome of the plea or the basic right at every stage of the case. In law and practice the duty of the court when charge is before the court is to make sure that, the charge is correct in its form and content and it discloses all the essential ingredient of the offence, secondly the court is duty bound to read the charge and explain to the accused and to ask the accused whether he admits the offence or denies it. Thirdly court has to record the plea and prosecute recalled upon to narrates facts which are again

read for the accused who is asked if he admits or not. The outcome of plea is provided under the provision of the law creating the offence and shall be pronounced at the final stage [sentence/penalty] therefore, this ground has no merits, it is dismissed.

The 4<sup>th</sup> ground concerns with the understanding of the charge charged the appellant, and what was the plea, in the proceedings of the trial court, the appellant has admitted the content of the charge and the facts adduced by the prosecution. He admitted series of acts he did and nothing else, the facts that he didn't understand the charges has no merits, thus ground lacks merits.

In his addition ground, the appellant is complaining that, the offence he stands charged was serious full trial was needed, these complaints have merit as the appellant voluntarily admitted the offences in the charged sheet and his unequivocal plea was properly recorded by the trial magistrate and nothing was contravened.

In the 2<sup>nd</sup> ground, the appellant is saying that the exhibit P2 was not read over to him, the record of the trial court shows that, the facts adduced by the prosecution was read over and explained to the Appellant, but even if the **exhibit P1** was not read to him the appellant was aware of it and he did not object. In the case of **Shukuru Tunugu**

**V. Republic Criminal Appeal No. 243 of 2015 (CAT Mbeya) (Unreported)** it citing the case of **Said Ally Siad V. Republic Criminal Appeal No. 249 of 2008 (CAT) (Unreported)**. It was settled .....

*"... It is not every discrepancy in the prosecution case that will cause the prosecution case to drop. It is only where the gist of evidence is contradictory that Prosecution case will be dismantled..."*

In the case of **Sebastian Gilbert V. Republic (1970) HCD No. 281 (HCT-Mwanza)** (Mzavas Ag,J as he then was). The issue before the court was whether the words..." it is true injured her unlawfully" amounts to unequivocal plea – if not, whether the position was remedied by facts narrated by the prosecution and admitted by the accused person.

**Held.**

- 1. In the first stage charge was read to the accused, he replied. It is true "I injured her unlawfully"*
- 2. The next question is whether the facts adduced by the prosecution Constituting offence one admitted by the (accused)Appellant*

3. *Having admitted the facts the final question is to decide whether admission of facts remedies the equivocal plea of guilty.*

Citing the case of **Pendo Mathias V. Republic [1970] HCD No. 209, Georges C.J** when dealing with the question whether accused plea was unequivocal he said, "Quite often an equivocal plea can be remedied by full statement of all the facts need to constitute the offence and an admission by an accused person that those facts are true" See the case of **Republic V. Rubenson Mwanga 2 TLR 3, Adan v. Republic (1973) EA 445 at 466 and the case of Chamrungu V. SMZ [1988] LRC (Crim) 26 at 29.**

All and all what was pleaded before the trial magistrate is nothing but unequivocal plea of guilty. Appeal has no merits the same is dismissed for being devoid of Merits. Convictions and sentence imposed by the trial court in two counts upheld.



*D Ndunguru*

**D.B NDUNGURU**

**JUDGE**

**01/04/2022**

Date - 01/04/2022  
Coram - Hon. M.S. Kasonde - DR  
Appellant - Present in person  
Respondent - Mr. Kabengula State Attorney  
B/C - Zuhura

**Mr. Kabengula State Attorney for Respondent:** The matter comes for judgment and we are ready.


**Appellant:** I am prepared too.



**M.S. Kasonde**

**Deputy Registrar**

**01/04/2022**



**Court:** Judgment delivered this 1<sup>st</sup> day of April, 2022 in Appellant and Mr. John Kabengula State Attorney for the



**M.S. Kasonde**

**Deputy Registrar**

**01/04/2022**

**Court:** Right of Appeal fully explained.



**M.S. KASONDE**

**DEPUTY REGISTRAR**

**01/04/2022**