IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MOSHI DISTRICT REGISTRY

AT MOSHI

CRIMINAL APPEAL NO. 74 OF 2021

(Originating from Criminal Case No. 315 of 2021 of Moshi District Court)

JOSEPH JOAKIM SARIA ---------- APPELLANT

VERSUS

THE REPUBLIC ---------- RESPONDENT

JUDGMENT

28/2/2022 & 1/4/2022

SIMFUKWE, J.

The appellant, Joseph Joakim Saria pleaded guilty to unnatural offence contrary to **section 154(1) (a)(2) of the Penal Code Cap 16 R.E 2019**. He was convicted on his own plea of guilty by the District Court of Moshi and sentenced to life imprisonment. Aggrieved, he preferred this appeal.

The facts of the case are simple and brief. It was the prosecution case that on 5/9/2021 at Newland area within Moshi District in Kilimanjaro region when the appellant did have carnal knowledge to one DPM (not his real name) aged 5 years old, against the order of nature. He pleaded guilty to the offence. The usual procedure to be taken when an accused pleads guilty, was complied with, whereby the facts of the case were read over to the appellant who admitted the same. The trial court found that,

facts which were narrated by the prosecution which were also admitted by the appellant, constituted the offence charged. He was then convicted on his own plea of guilty and the trial court sentenced him to life imprisonment.

During the hearing of this appeal, the appellant was unrepresented while the respondent/Republic was represented by Ms. Grace Kabu, learned State Attorney. In his Memorandum of appeal, the appellant advanced five detailed grounds of appeal as follows:

> 1. *That, the learned trial Magistrate grossly erred both in law and fact in convicting the Appellant on his an equivocal plea of guilty as it was imperfect, ambiguous and unfinished since if the appellant failed to know his exact age (How old is he) How could it be possible for him to be able to understand the nature of the case facing him and the facts read to him so as to plea to the case unequivocally, Because it is incomprehensible and wholly impossible for a person who was born in 1992 to be of 20 years old in 2021. This is what precisely was said by the Appellant, That he was born in 1992, and now (2021) that he is 20 years old. (sic)*
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> 2. *That, the learned trial magistrate grossly erred both in law and fact by not considering that, the Appellant is below the age of 18 years old. Therefore, in sentencing him to a life term imprisonment was unethical, prejudicial and contrary to the Mandatory laid provisions of the law. As taking into account that even by looking at the Appellant himself clearly shows that he is a minor. But even if the trial court doubted*

on his age still the proper procedure to adopt was to seek an Expert examination's opinions on the Appellant's exact age and not to rely on the trial Magistrate and social welfare officers' opinions (supra) who were not experts to determine on the age of the Appellant and give the conclusive proof that he is above 18 years old. (sic)

3. That, the learned trial Magistrate grossly erred in both law and fact by not considering that every constituent of the charge should be explained to the accused and he should be required to admit or deny every constituent in a form which will satisfy an appellate court that he fully understood the charge and pleaded to every element of it unequivocally.(sic)

4. That, the learned trial magistrate grossly erred in both law and fact in convicting and sentencing the appellant but failed to note that the courts are always concerned that an accused person should not be convicted on his own plea, unless it is certain that, he really understood the charge and had no defense to it. (sic)

5. That, the learned trial Magistrate grossly erred in both law and fact when she failed to adopt the opinions expressed by the ***Court of Appeal for Eastern Afica (sic) in the case of IBRAHIM bin SALEHE V. R, 1 TLR @ 641 THAT "It is not desirable to record a plea of guilty in a capital charge.***

The appellant being unrepresented had nothing to submit. He prayed to adopt the grounds of appeal.

The learned State Attorney submitted in respect of the 1st ground of appeal which is to the effect that the plea of the appellant was equivocal. She referred the court to page 2 of the trial court proceedings in which when the charge was read over to the appellant his plea was that:

> *"Ni kweli nilimuingizia uume wangu mtoto (D.P.M- not his real name to protect his dignity) kwenye eneo la haja kubwa."*

She stated that as per **section 154(1)(a) and (2) of the Penal Code** (supra) the plea of the appellant was unequivocal since his plea suited the offence charged. The learned State Attorney also referred to page 3 of the same proceedings where the record shows that the matter was adjourned for 20 minutes, when the court resumed, the charge was read over to the appellant who pleaded guilty unequivocally for the second time. She argued that his plea contained all the ingredients of the offence charged. Also, at page 4 and 5, the facts of the case were read over to the appellant and he replied to the effect/extent of proving all the essential ingredients of the offence of which he was charged. That he inserted his penis into the anus of the victim. Ms. Grace opined that according to the replies of the appellant, he knew and understood the charge against him. Thus, his plea was not ambiguous and equivocal.

On the 2nd ground of appeal which is in respect of the age of the appellant, Ms. Grace stated that this issue was answered at page 1 of the proceedings whereby the trial court made the inquiry and the appellant told the trial court that he was 20 years old. Though, when asked when he was born, he said that he was born in 1992, meaning that he was 29

years old. She stated that, apart from that discrepancy, the trial court made a finding that the accused was not a child.

Submitting on the 3rd ground, the learned State Attorney stated that this ground was answered in the 1st ground of appeal. While referring to page 5 and 6 of the proceedings, Ms. Grace argued that, the trial court in its findings quoted the provision of the offence charged and discussed the replies of the accused person to the effect that the same matched the offence charged and the court concluded that the pleas of the accused were not equivocal.

Having studied carefully the memorandum of appeal, submission of the learned State Attorney as well as the trial court records, I now turn to the merit of this appeal.

The law is settled as to the procedure to be taken when an accused person pleads guilty. Under **section 228 (2) of the CPA** the law provides that:

> *"(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 trial court's records speak loudly from page 2-7 of the proceedings that, the trial magistrate followed the procedures as enunciated under the above provision of the law. Basing on the trend taken by the trial magistrate, it goes without saying that the appellant's conviction followed a plea of guilty to the charge against him.

Under **section 360 (1) of Criminal Procedure Act, Cap 20 R.E 2019** the law provides that, no appeal shall be allowed to the accused person who has pleaded guilty and has been convicted on such plea except as to the extent or legality of the sentence. There are also some exceptions when the accused can appeal against his own plea of guilty as established in number of cases. In the case of **Josephat James v. Republic, Criminal Appeal No. 316 of 2010,** the Court of Appeal stated the circumstances where one can appeal against his plea of guilty that; -

i. *The plea was imperfect, ambiguous or unfinished and, for that reason, the lower court erred in law in treating it as a plea of guilty;*

ii. *An appellant pleaded guilty as a result of a mistake or misapprehension;*

iii. *The charge levied against the appellant disclosed no offence known to law, and*

iv. *Upon the admitted facts, the appellant could not in law have been convicted of the offence charged. (See* ***Laurence Mpinga v. Republic, (1983) T.L.R. 166 (HC)*** *cited with approval in* ***Ramadhani Haima's case (Cr. Appeal No. 213 of 2009, CAT, unreported).***

The appellant's complaint falls under category (i) of the above authority. This aspect touches the 1st, 3rd, 4th and 5th grounds of appeal. Under these grounds, the appellant complained that, his plea was ambiguous imperfect and unfinished for the reason that the appellant failed to know his exactly age, thus, he was unable to understand the nature of the case facing him.

Under the 3rd ground he faulted the trial magistrate for failure to explain every element of the charge.

With due respect, I am not supporting the appellant's claims for the reason that, the appellant in his own words which were quoted in Swahili pleaded guilty to the charge. He even reiterated his plea when the court re - read the charge after short adjournment as rightly submitted by the learned State Attorney. Moreover, the appellant accepted the prosecution facts in support of the charge; the facts which constitutes the elements of the offence of unnatural offence. Even the words which the appellant pleaded contains the elements of the offence of unnatural offence which suggests that the elements of the offence were explained to him. For ease reference I wish to quote the appellant's words:

> *"Accused: 'Ni kweli nilimuingizia uume wangu mtoto (D.P.M- not his real name to protect his dignity) kwenye eneo la haja kubwa."*

Also, at page 5 of the trial court proceedings, when the facts were read over to the appellant, he stated as follow;

> *"The accused person: I admit all the facts, I took the victim Daniel to the sugar cane farm, undressed his clothes and I inserted my penis into his anus. I pray for the court's leniency. I was so hungry. I was passing by, the victim followed me to the sugar cane farm."*

In those circumstances, I am convinced that the charge clearly pointed out the elements of unnatural offence and the accused's plea was unequivocal. Thus, the 1st, 3rd, 4th and 5th grounds of appeal have no merits.

Coming to the 2nd ground of appeal in respect of the sentence, the appellant complained that the sentence of life imprisonment which was imposed to him was unethical, prejudicial and contrary to the law since he was below the age of 18 years. The learned State Attorney argued that the trial court made an inquiry and concluded that the appellant/accused was not a child. This ground will not detain me since the charge sheet reveals that the accused was 20 years old. When the accused was asked his age, he stated that he was born in 1992 meaning that he was more than 18 years. In that respect therefore, I find it baseless for the appellant to dispute his age at this stage since he did not raise such concern of being below majority age before the trial court. Thus, having considered the age of the victim, I find the sentence imposed of life imprisonment to be lawful as provided under **section 154 (2) of Penal Code** (supra).

In the circumstances, I find no reason to interfere with the conviction and sentence imposed to the appellant by the trial court. I therefore dismiss this appeal in its entirety.

It is so ordered.

Dated and delivered at Moshi this 1st day of April, 2022.

S. H. Simfukwe

Judge

1/4/2022