

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(BUKOBA DISTRICT REGISTRY)  
AT BUKOBA**

**CRIMINAL APPEAL NO. 74 OF 2021**

*(Originating from Criminal Case No. 20 of 2018 of District Court of Muleba at Muleba)*

**REMILDIUS PASTORY----- APPELLANT**

**VERSUS**

**REPUBLIC----- RESPONDENT**

**JUDGEMENT**

**Date of Last Order: 10/02/2022**

**Date of Judgment: 25/02/2022**

**Hon. A. E. Mwipopo, J.**

The appellant namely Remildius Pastory was charged in the District Court of Muleba at Muleba for two counts. The first count was for the offence of Rape contrary to section 130(1), (2) (e) and section 131(1) of the Penal Code, Cap. 16 R.E. 2019; and the second Count was for the offence of impregnating a school girl contrary to section 60A (3) of the Education Act, Cap. 353, R.E. 2019. The appellant pleaded not guilty to the offence of rape and pleaded guilty to the offence of impregnating a school girl. As result the trial Court convicted the appellant for the offence for his own plea of guilty and sentenced him to serve 30 years imprisonment. Then, the prosecution decided to withdraw the charge for the remaining offence of rape.

The appellant was aggrieved with the decision of the District Court and filed the present appeal. In his petition of appeal, the Appellant has raised a total of three grounds of appeal as provided hereunder:-

- 1. That, the trial magistrate grossly erred in law and facts to convict and sentence the appellant without considering the age of the victim was proved, that, the appellant entered in love affairs with the victim knowingly that she had 20 years with a promise to marry each other.*
- 2. That, the learned trial magistrate grossly erred in law and fact when he failed to observe that the evidence to prove that she was a student was not adduced before the Court and the appellant plea was equivocal.*
- 3. That, the learned trial magistrate failed to observe that the case was not proved beyond reasonable doubt.*

The appellant who appeared in person prayed for his grounds of appeal which are found in the Petition of Appeal to be considered by the court and the court to allow his appeal.

In response, Ms. Happiness Makungu, State Attorney appearing for the Respondent was against the appeal and supported the conviction and the sentence of the trial District Court. She said that the proceedings shows that the appellant pleaded guilty to the second count of impregnating a school girl on 09.02.2021. The appellant stated that he impregnated the school girl while knowing that she was a school girl. The facts of the case was read over to the Appellant who

admitted it. The facts revealed that the appellant was aware that the victim was a school girl of Bureza Secondary School aged 16 years. These facts proved without doubt that the Appellant impregnated a school girl. In the case of **Kalos Punda v. The Republic**, Criminal Appeal No. 153 of 2005, Court of Appeal of Tanzania at Mtwara, (Unreported), the Court was satisfied that the appellant was rightly convicted on his own unequivocal plea of guilty as he pleaded guilty to the charge and also accepted the prosecution facts in support of the charge. As the appellant pleaded guilty to the offence and accepted the prosecution facts, his plea is unequivocal.

As a general principle, a person convicted of an offence on his own plea of guilty is barred from appealing against conviction. This is in accordance with section 360(1) of the Criminal Procedure Act, Cap. 20 R. E. 2019. The section provides that:-

*"360.-(1) 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 person who has been convicted for his plea of guilty can only appeal against the extent or legality of the sentence imposed.

However, there are circumstances which may render a plea equivocal hence a conviction on one's plea of guilty may successfully be challenged by way of an

appeal. In the case of **Karlos Punda vs Republic**, Criminal Appeal No. 153 of 2005 (unreported), the Court of appeal set four factors which will render the plea equivocal. The said factors includes that 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; that the appellant pleaded guilty as a result of mistake or misapprehension; that the charge laid at the appellant's door disclosed no offence known to law; and that upon the admitted facts the appellant could not in law have been convicted of the offence charged.

The Court of appeal in the case of **Michael Adrian Chaki v. Republic**, Criminal Appeal No. 399 of 2019, Court of Appeal of Tanzania at Dar Es Salaam, (Unreported), provided for emphasized on the conditions to be met for the plea to be considered as unequivocal. These conditions includes that the appellant must be arraigned on a proper charge; that the court must satisfy itself that an accused fully comprehends what he is actually faced with; the charge is stated and fully explained to the appellant before he is asked to plea or admit each and every particular ingredient of the offence; the facts adduced after recording a plea of guilty should disclose and establish all the elements of the offence charged; and the accused must be asked to plead to each and every ingredient of the offence charged and the same must be properly recorded. The court must satisfy itself without any doubt that the facts adduced disclose or establish all the elements of the offence charged before a conviction on a plea of guilty is entered.

In the case at hand, when the appellant was reminded of the charge he was facing and called upon to plead, he responded "it is not true" to the first count and the Court recorded plea of not guilty. When he was called to respond to the second count he responded that "it is true that I impregnated a student Hidaya Najibu while I knew she was a student" and the learned trial magistrate entered a plea of guilty to the second count. Thereafter, the prosecution was called to narrate the facts of the case to the second count of impregnating a school girl. The facts narrated by the prosecution revealed that on September, 2020, the appellant impregnated Hidaya Najibu a girl aged 16 years and student of Bureza Secondary School while in fact he knew that the girl is a student of Bureza Secondary School. The appellant responded that the facts are true that I impregnated Hidaya Najibu a girl of 16 years as she was my love and we had sexual intercourse for several days.

The facts narrated by the prosecution established all the elements of the offence as laid in the charge. The appellant admitted that the facts are true. The appellant when admitting the facts to be true he said that the victim was his love and they had sexual intercourse for several days. The appellant did not challenge any fact which was narrated by the prosecution. The facts narrated by the prosecution disclosed a detailed account of how the offence was committed. From the facts gathered on record, there is no doubt that the appellant understood the ingredients of the offence of impregnating a school girl he was charged against.

For that reason, I find that the appellant plea of guilty to the offence of impregnating a school girl was unequivocal. Thus, the appellant's other grounds of appeal will not be considered as the grounds are in relation to the part of appeal which is barred by section 360 (1) of the Criminal Procedure Act.

Therefore, this appeal is devoid of merit and I dismiss it in its entirety accordingly.

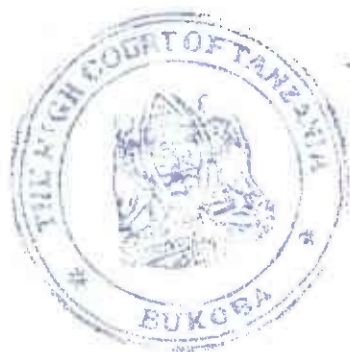


A.E. Mwipopo

**Judge**

25/02/2022

The Judgment was delivered today, this 25.02.2022 in chamber under the seal of this court in the presence of the Appellant and the counsel for the Respondent.



A. E. Mwipopo

**Judge**

18.02.2022