

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

CRIMINAL APPEAL NO. 78 OF 2020

(Arising from Ngara District Court in Criminal Case No 145 of 2020)

BARAKA ZAKAYO.....APPELLANT
VERSUS
REPUBLIC..... RESPONDENT

JUDGMENT

04th February & 25th February 2022

Kilekamajenga, J.

The appellant, Baraka Zakayo, was arraigned before the District Court of Ngara for the offence of rape and impregnating a school girl Contrary to **section 130 (1) (2) (e) and 131 (1) of the Penal Code, Cap 16 RE 2019** and **section 60A (3) of the Education Act, Cap. 353 RE 2002**. It is alleged that, the appellant, on 21st May 2020, during the evening hours at Burambila village within Ngara District raped and finally impregnated a school girl aged 14 years. When the charge was read and explained to the appellant, he pleaded guilty on both counts. The facts of the offence were read and explained to him, he further admitted them. As a result, the appellant was convicted on the two counts and was sentenced to serve 30 years in prison for each count and the court ordered the sentence to run concurrently.

Thereafter, the appellant appealed to this court armed with two grounds of appeal coached thus:

- 1. That, the trial Magistrate erred in law and in facts by convicting and sentencing the appellant based on an equivocal admission adduced by the appellant. "It is true";*
- 2. That, the trial magistrate erred in law and facts by failing to discover that the admission of the appellant was due to the force from the Police Officer (NO.F.9947 D/C SILVANUS) where the appellant was badly beaten and promised to be broken all his legs if he won't admit the offence before the court (a copy of PF3 is attached).*

He later filed an additional petition of appeal containing eight grounds of appeal thus:

- 1. That, the Hon. trial magistrate erred in law and fact to convict the appellant without proceeding the lawful procedure prescribed in Section 194(1) of the Criminal Procedure Act Cap 20 RE 2019.*
- 2. That, the hon. Trial court erred in law and fact that to convict the appellant without any principle (sic) witness in the effect of the victim to prove the allegation against the appellant.*
- 3. That, the hon. Trial magistrate fatally misdirected himself to convict the appellant in absence of the victim to notice her remarks and demeanor of the witness as required by section 212 of the Criminal Procedure Act Cap 20 RE 2019.*
- 4. That, the hon. Trial magistrate erred in law and fact to convict the appellant without any proving document form a medical examiner in the*

effect of a PF3 signed and filed by professional doctor as proved penetration on the victim so as to certify rape.

- 5. That, the Hon. trial court prejudiced the appellant to convict him with no confirmative evidence proving the age of the victim as required by the law.*
- 6. That, the hon. trial magistrate faulted to convict the appellant without any proving evidence from the D.N.A profiling test as required by Section 395 A of the Criminal Procedure Act Cap 20 RE 2019.*
- 7. That, the judgment instituted against the appellant is fatally invalid and shamefully defective for failure to state the contents of the charge violating section 312(2) of the Criminal Procedure Act Cap 20 RE 2019.*
- 8. That, the appellant was vetitiously charged on a defective charge sheet contravening Section 135(a) (ii) of the Criminal Procedure Act Cap 20 RE 2019.*

When the appellant appeared before this court to defence the appeal, being a lay person and unrepresented, he urged the court to adopt his grounds of appeal and grant justice. On the other hand, the learned State Attorney, Mr. Joseph Mwakasege objected the appeal because the appellant had no good reason to challenge the decision of the trial court. The learned State Attorney further submitted that, the appellant's plea was unequivocal. Therefore, the first ground had no merit because the charge against the appellant was read and the appellant pleaded guilty to the two counts. Also, the facts of the offence were adduced and the appellant admitted. It is therefore a lie and illogical to argue that the plea was equivocal. The State Attorney supported the argument with the

case of **Rulent Mpinga v. Republic [1983] TLR 166** which had similar facts to the instant case.

On the second ground, Mr. Mwakasege submitted that, the appellant pleaded guilty while in court. He was therefore free to offer his plea and there is no possibility that he succumbed to the pressures of the police while he was before the court.

When submitting on the additional grounds of appeal, Mr. Mwakasege argued that, they all point towards the plea of guilty. As the case was decided based on the plea of guilty, the prosecution could not have brought witnesses. Mr. Mwakasege urged the court to dismiss the appeal.

When rejoining, the appellant further insisted that, the case was not proved to the required standard and he urged the court to set him free.

I have carefully considered the grounds of appeal advanced by the appellant in which he seems to raise a saviours issue on the proof of the case to the required standard. I am fully aware that, this being a criminal case, the offence was supposed to be proved beyond reasonable doubt. However, this requirement

may not be fully satisfied where the accused enters a plea of guilty. In the instant case, when the charge against the appellant was read and explained, he entered the following plea on both counts:

1st court: *It is true that we agreed and I raped Roda d/o Sedekia on 21/05/2020.*

2nd Count: *It is true that on 21/05/2020 I impregnated Roda d/o of Sedekia, a standard four pupil of Ntebeye Primary School aged 14 years old.*

The above two pleas cannot, in any way, be regarded as equivocal. Under these circumstances, the prosecution was thwarted from summoning witnesses to prove the case which the appellant already entered a plea of guilty. Furthermore, the facts were read to the appellant and he admitted. In the case at hand the appellant cannot allege that the case was not proved beyond reasonable doubt. Also, under **section 360 (1) of the Criminal Procedure Act, Cap 20 RE 2019**, the appellant cannot challenge the conviction but he only have an option to challenge the length of sentence and not otherwise. The section provides:

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. (Emphasis added).

In the instant case, the conviction and sentence against the appellant were in line with the law. I real find no merit in the appeal and dismiss it accordingly. It is so ordered.

DATED at **BUKOBA** this 25th day of February, 2022.



A handwritten signature in blue ink, appearing to read "Ntemi N. Kilekamajenga".

Ntemi N. Kilekamajenga

JUDGE

25/02/2022

Court: Judgment delivered this 25/02/2022 in the presence of the appellant and the learned state attorney, Mr. Joseph Mwakasege. Right of appeal explained.



A handwritten signature in blue ink, appearing to read "Ntemi N. Kilekamajenga".

Ntemi N. Kilekamajenga

JUDGE

25/02/2022