

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

**(DC). CRIMINAL APPEAL NO. 64 OF 2021**

*(Originating from Mufindi District Court at Mufindi, Criminal Case No. 79  
of 2021)*

**ROGATUS NYELENGE ..... APPELLANT**  
**VERSUS**  
**THE REPUBLIC.....RESPONDENT**

**JUDGEMENT**

**Date of Last Order:** 23/02/2022

**Date of Judgement:** 08/06/2022

**MLYAMBINA, J.**

Rogatus Nyelenge, the Appellant herein, was arraigned in the District Court of Mufindi at Mafinga for the offence of rape contrary to *Section 130(1) & (2)(e) and 131(3) of the Penal Code [Cap 16 R. E. 2019]* (henceforth the Penal Code).

Briefly, the particulars of the offence read as follows; that, on 18<sup>th</sup> August 2021 at Nyololo Village, Nyololo Ward within Mufindi District in Iringa Region, the Appellant had unlawful carnal knowledge of a girl of 7 years old.

When the charge was read, the Appellant was pleaded guilty to the offence. He was convicted thereon and he was sentenced to serve life imprisonment. Aggrieved by the conviction and sentence that was meted to him, the Appellant has appealed to this Court armed with seven grounds of appeal to signify his grievance, namely:

1. That, the learned Trial Magistrate erred in law and facts to convict and sentence Appellant relying only on his plea of guilty while such plea was equivocal and not conclusive evidence.
2. That, the learned Trial Magistrate erred in law and facts to enter punishment to the Appellant at the first date appearing at the Court without giving another date from him in order to prove his plea of guilty if its equivocal or otherwise.
3. That, the learned Trial Magistrate erred in law and facts to convict and sentence the Appellant based on exhibits P1 which were not tendered by the clear person who made it; hence, the judgement was not fair and just on the eyes of laws when a wrong person tendered such document.
4. That, the learned Trial Magistrate erred in law and facts convict and sentence the Appellant while the prosecution side fail to brought neither any one nor a victim before the Court of law to

corroborate the charge against Appellant in sense that a victim always is a key witness in a sexual offence.

5. That, the learned Trial Magistrate erred both in law and facts to convict and sentence the Appellant without the prosecution side to bring any witness to argue/establish the elements of rape or defilement if occurred to the victim or not.
6. That, the learned Trial Magistrate erred in law and facts to convict and sentence the Appellant basing on the weakness of the Appellant to express himself before the Court of law without considering that such weakness of Appellant it's not a ticket for Court to convict him or sentence when the prosecution side still failed to prove the offence against the Appellant when no any witness proved it even a victim didn't argue anything.
7. That, the prosecution side failed totally to prove this case against the Appellant beyond reasonable doubt.

In this appeal, the Appellant appeared before this Court in person and fended for himself. On the other hand, the Respondent (Republic) was represented by Ms. Edna Mwangulumba learned State Attorney.



During the hearing, the Appellant adopted his grounds of appeal and only prayed for his grounds of appeal be accepted as prayed and the Court set him free on liberty.

On the other hand, Miss Edna Mwangulumba for the Respondent didn't support this appeal. The Appellant pleaded guilty to the charge as per first page of the proceedings. Further, she submitted that the Appellant plea was unequivocal and conclusive evidence. The reason being that when the charge was read over, the accused replied "*Ni kweli nimefanya mapenzi*". Also, when the facts were read over, at page 2 of the typed proceedings, the accused replied:

*"Maelezo yote yaliyosomwa na Wakili wa Serikali  
ni ya kweli nakubali"*

Furthermore, she submitted that in his Mitigation, the Appellant prayed for mercy because he committed the offence under influence of traditional belief. Ms. Mwangulumba invited this Court to be guided by the case of **Ramji S/O Mhapa v. The Republic** Criminal Appeal No. 88 of 2014, at page 10. She also reminded this Court to the provisions of *Section 282 of Criminal Procedure Act [Cap 20 R.E. 2019]* which requires when an Accused Person plead guilty to the charge, the plea must be recorded and he may be convicted.

Furthermore, Ms. Mwangulumba submitted that the first exhibit which was PF3 was unobjected because the Appellant pleaded guilty. She prayed the same not be expunged from record. Even if it is expunged, it was the submission of Ms. Mwangulumba that the plea of the accused is strong enough for his conviction to stand.

Moreover, Ms. Mwangulumba submitted that *Section 229 of Criminal Procedure Act (supra)* requires to call witness only when the Accused Person pleads not guilty. But in the case at hand, the Appellant pleaded guilty to the charge sheet which established the ingredients of rape. It was further established that the plea of guilty of the Appellant was not a weakness and he was convicted based on his own plea of guilty which proved the case beyond reasonable doubt. The Respondent had no more duty to prove the charge. Therefore, Ms. Mwangulumba prayed this appeal be dismissed, the conviction and sentence issued by the Trial Court be upheld.

In his rejoinder, the Appellant conceded that he pleaded guilty because he was beaten by Police but he was not beaten while in the Court.

Before I deal with the merits of the appeal in the light of the submissions from both sides, I wish to remind both parties that generally *Section 360 (1) of the Criminal Procedure Act [Cap 20 R.E*

2019] bars entertainment of an appeal against a conviction based on a plea of guilty except to the extent or legality of the sentence imposed.

That provision states that:

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.

Notwithstanding the above provision, an appeal against a conviction on a plea of guilty may lie under certain circumstances as an exception to the general rule. The circumstances thereon are: *One*, that even taking into consideration the admitted facts, his plea was imperfect, ambiguous or unfinished and, for that reason, the lower Court erred in law in treating it as a plea of guilty. *Second*, that he pleaded guilty as a result of mistake or misapprehension. *Third*, that the charge laid at his door disclosed no offence known to law. *Fourth*, that upon the admitted facts he could not in law have been convicted of the offence charged. See the case of **Kalos Punda v. Republic**, Criminal Appeal No. 153 of 2005; **Deus s/o Gendo v. Republic**, Criminal Appeal No. 480 of 2015 (all unreported), and **Laurent Mpinga v. Republic** [1983] TLR 166.



At the outset, I reaffirm that an accused shall be convicted on his own plea of guilty if the Court is satisfied that his plea is unequivocal. That is, where it is ascertained that he has accepted as correct facts which constitute all ingredients of the charged offence as per *Section 228 (2) of the Criminal Procedure Act (supra)* which states that:

*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 same position was underscored in the case of **Ndaiyai Petro v. Republic**, Criminal Appeal No. 277 of 2012 (unreported).

In the case at hand, the Appellant claimed that his plea was equivocal, hence not conclusive evidence which can be used to convict and sentence him to jail. But when this Court revisited the records of the trial Court, it noted that the plea of guilty of the Appellant was unequivocal, hence safe for the Appellant to be convicted.

When the charge was read before the Appellant, he pleaded guilty to the charge. At page 1 of the typed proceedings, the Appellant replied 'ni kweli nilifanya mapenzi' not only that, but also when the facts of the

case was narrated by the prosecutor, he admits the facts by replying that, '*maelezo yote yaliyosomwa na wakili wa serikali ni ya kweli nakubali*' as per page 2 of the trial Court typed proceedings. These statements are enough to signify that the Appellant was aware with the charge read before him and not otherwise. Therefore, the trial Magistrate was correct to convict him based on his own plea. See the case of **Khalid Othumani v. Republic**, Criminal Appeal No. 103 of 2005 and **Charles Samweli Mbise v. The Republic**, Criminal Appeal No. 355 of 2019 (both unreported).

More to say, the Appellant shows that he appreciated the charge against him, when he was given an opportunity to mitigate, he narrated that:

*This is my first offence, I pray for your mercy, I committed the offence under influence of traditional beliefs.*

This being the case, there is no reason which ought to make the Appellant to lament. He was clearly convicted based on his plea of guilty.

Regarding to the sentence imposed to him, it is statutory as per *Section 131(3) of the Penal Code [Cap 16 R.E 2019]* which provides that:

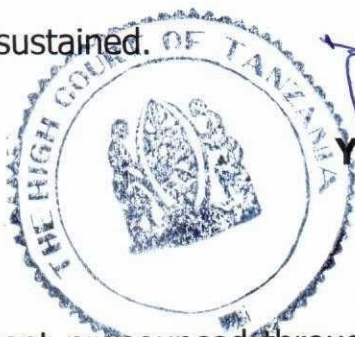


*Subject the provisions of subsection (2), a person who commits an offence of rape of a girl under the age of ten years shall on conviction be sentenced to life imprisonment.*

Given the fact that the raped victim was aged 7 years, the sentence meted to the Appellant was correct.

In the end, therefore, this appeal is hereby dismissed for want of merits.

The conviction and sentence meted by the trial Court to the Appellant is hereby sustained.

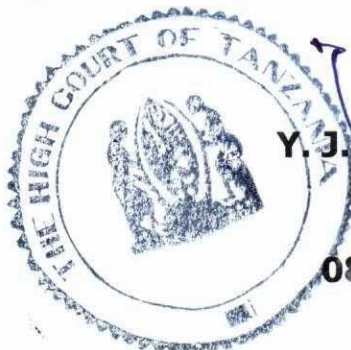


**Y. J. MLYAMBINA**

**JUDGE**

**08/06/2022**

Judgement pronounced through Virtual Court and dated this 8<sup>th</sup> day of June, 2022 at 11:30 am in the presence of the Appellant in person and Senior learned State Attorney Alex Mwita and Blandina Manyanda, for the Respondent. Both parties were stationed at the High Court of Tanzania Iringa District Registry's premises. Right of Appeal explained.



**Y. J. MLYAMBINA**

**JUDGE**

**08/06/2022**