

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

AT BUKOBA

CRIMINAL APPEAL NO. 62 OF 2022

(Originating from Criminal Case 244 of 2019 District Court of Karagwe)

SARAPION PHIDEL..... APPELLANT

VERSUS

REPUBLIC..... RESPONDENT

JUDGMENT

23rd May and 2nd June, 2023

BANZI, J.:

On 23rd July, 2019, the appellant was arraigned before the District Court of Karagwe charged with the offence of rape contrary to sections 130 (1) (2) (e) and 131 (1) of the Penal Code [Cap. 16 R.E. 2002]. It was alleged that, on 16th July, 2019 at Omurusimbi village, within Karagwe District in Kagera Region, the appellant did unlawfully have sexual intercourse with AB (name withheld to protect her identity) aged 16 years old. He pleaded guilty to the charge, as a result, he was convicted and sentenced to thirty (30) years imprisonment. The appellant is now before this court challenging his conviction and sentence. Generally, it is his contention that, his conviction

was based on his plea of guilty which was equivocal, ambiguous and imperfect.

At the hearing of this appeal, the appellant appeared in person through video link from Lindi District Prison, whereas, the respondent Republic had the services of Mr. Erick Mabagala, learned State Attorney. After noticing irregularity on the proceedings, I invited the parties to address on whether the procedure of plea of guilty was followed by the trial court. The appellant being a lay person, he did not have much to say but left it to court to decide while praying to be released. On his part, Mr. Mabagala admitted that, the procedure of recording plea of guilty was not followed as the record does not reveal if the facts were read over to the appellant before he admitted them. He cited the case of **Michael Aidan Chaki v. Republic** [2021] TZCA 454 TanzLII which emphasised that, if there is problem in a plea of guilty, the matter should be remitted of fresh plea.

It is worthwhile to underscore that, according to section 228 (2) of the Criminal Procedure Act [Cap. 20 R.E. 2022] ("the CPA"), when the accused person admits the charge, his admission must be recorded as nearly as possible in the words he uses and the magistrate shall convict him and pass sentence. However, the procedure on how to record pleas of guilty was

clearly set out by the then Court of Appeal for East Africa in the case of **Adan v. Republic** [1973] EA 445 and fortified by the Court of Appeal of Tanzania in the case of **Peter Kombe v. DPP**, Criminal Appeal No. 12 of 2016 CAT at Mbeya (unreported) where it was stated as follows:

- (i) The charge and all the ingredients of the offence should be explained to the accused in his language or in a language he understands.*
- (ii) The accused's own words should be recorded and if they are an admission, a plea of guilty should be recorded;*
- (iii) **The prosecution should then immediately state the facts** and the accused should be given an opportunity to dispute or explain the facts or to add any relevant facts.*
- (iv) If the accused does not agree with the facts or raises any question of his guilt, his reply must be recorded and change of plea entered.*
- (v) If there is no change of plea, a conviction should be recorded and a statement of the facts relevant to sentence together with the accused's reply should be recorded. (Emphasis added).*

It is apparent from the extract above that, before the accused person is called upon to dispute or admit the facts, such facts disclosing all necessary

ingredients of the charged offence must be read over and explained to the accused person to afford him opportunity to understand the nature of the case against him and being aware on what he was about to admit.

In the instant case, the record of the proceedings reveals that, after the charge was read over and explained to the appellant, he admitted it and a plea no guilty was entered by the trial court. Thereafter, the appellant began to admit one fact after another before such facts were read over and explained to him by the prosecutor as the procedure requires. Then the appellant and the prosecutor were invited to sign before the trial magistrate entered a conviction. The proper procedure was for trial court to invite the prosecutor to adduce the fact by reading them to the appellant before he was given opportunity to admit them. But that was not the case in the matter at hand where the appellant admitted something which was not read over and explained to him. It was as if he admitted something which fell out of the sky. Equally, by inviting the appellant and prosecutor to sign is as if the trial court was conducting preliminary hearing which is a procedure following a plea of not guilty. That was indeed improper procedure which cannot be saved by section 388 (1) of the CPA.

On that basis, I invoke revisional powers to nullify the whole proceedings, quash the conviction and set aside the sentence. Consequently, I remit the record to the trial court for a retrial before another magistrate having jurisdiction to try the case. In the meantime, the appellant shall remain in custody until he is sent to the trial court.

It is so ordered.



I. K. BANZI
JUDGE
02/06/2023

Delivered this 2nd of June, 2023 in the presence of Mr. Erick Mabagala, learned State Attorney for the Respondent and the appellant through video link from Resident Magistrate's Court of Lindi. Right of appeal fully explained.



I. K. BANZI
JUDGE
02/06/2023