

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

**CRIMINAL APPEAL NO. 123 OF 2022**

*(Arising from Criminal Case No.105 of 2021 at District Court of Longido at Longido)*

**ELIA HUMPHREY KIMARO.....APPELLANT**

**Vs**

**THE DPP..... RESPONDENT**

**JUDGMENT**

*Date of last order: 3-4-2023*

*Date of judgment: 2-6-2023*

**B.K.PHILLIP,J**

The appellant herein was arraigned at District Court of Longido at Longido on the offence of unnatural offence contrary to section 154 (1) (a) and (2) of the Penal Code (Cap 16, R.E 2019). The trial Court found him guilty on his own plea of guilty and sentenced him to life imprisonment.

Aggrieved by the aforesaid conviction and sentence, he lodged this appeal on the following grounds;

- (i) That the learned trial magistrate erred in convicting and sentencing the appellant on a plea which was not unequivocal, without satisfying herself as to whether the appellant understood the nature of the charge and sentence, he was facing and whether the plea was equivocal or unequivocal.*
- (ii) That the trial magistrate erred in law and fact in convicting and sentencing the appellant despite that the appellant's*

*plea of guilty was unsatisfactory as it did not amount to an admission to constituent element of the charge and facts of the case.*

- (iii) That, the trial magistrate erred to convict and sentence the appellant despite that the charge was not proven beyond reasonable doubts.*
- (iv) That, the trial magistrate erred to believe that the appellant defiled a boy of 11 years old without this boy being seen or present or proof of penetration and without the alleged PF3 being tendered.*
- (v) That the trial magistrate erred in convicting and sentencing the appellant as charged despite no evidence was adduced from the said Hon. Assia Ally Msuri and despite the failure by the prosecution to tender the alleged confession statement of the appellant.*
- (vi) That the trial magistrate erred when she proceeded to convict and sentence the appellant of the charged offence without examining the credibility of the charged offence was alleged committed on 24/10/2020 but it was only disclosed on 25/10/2021.*
- (vii) That in the alternative appellant prays the Court to consider the life imprisonment which is excessive.*

At the trial court the prosecution's case as follows; that on 24<sup>th</sup> day of October 2021 at Oltepes Village within Longido District in Arusha Region the appellant did have carnal knowledge with one "TJ" (name withheld

for purposes of concealing his identity) a boy aged eleven (11) years old against the order of nature.

The court's record reveal that the charge was read in Court and explained to the appellant who entered a plea of guilty. Thereafter the facts of the case were read aloud in court and were admitted by the appellant. Consequently, the Magistrate convicted the appellant on his own plea of guilty and sentenced him to life imprisonment.

Now, back to the appeal at hand, the appellant appeared in person, unrepresented whereas learned state attorney Riziki Mahanyu appeared for the respondent.

During the hearing of the appeal the appellant submitted on 1<sup>st</sup> ground of appeal only. His submission was to the effect that the trial Magistrate erred to convict him on allegation that he pleaded guilty. He further argued that the trial Magistrate was supposed to be sure of the uncertainty of his answer/response to the charge. To support his argument, he cited the case of **Juma Tumbiliya and two others Vs Republic (1998) T.L.R. 139.**

Moreover, he submitted that the charge sheet shows that the offence was committed on 24<sup>th</sup> October 2021 while in the facts of the case read aloud in court it was stated that the offence was committed on 24<sup>th</sup> October 2020. Thus, the particulars of the offence in the charge in respect of the date of commitment of the offence are different from the facts of the case presented in court. Thus, he was of the opinion that the facts alleged to be accepted by him in the charge sheet are different from the facts of the case read aloud in court. He maintained that the plea of guilty was wrongly entered.

In rebuttal, Ms. Mahanyu submitted that at the page one of the trial court's proceedings it is indicated that the appellant pleaded guilty to the offence of unnatural offence. The plea of guilty was made so clear by the appellant when he said that the following words; "it is true I had carnal knowledge of TJ against the order of nature".

Moreover, Ms. Mahanyu submitted as follows; that the facts of the case explaining in detail how the offence was committed were read aloud in court and the appellant admitted that the same were correct. After being convicted the appellant prayed to be given a lesser sentence since he admitted the offence. Further he told the trial court that he has been remorseful and was not happy with what he did that's is why he pleaded guilty to the offence. Ms. Mahanyu insisted that the appellant understood everything about the offence facing him and pleaded guilty thereto. On the difference of the dates indicated in the charge sheet and the facts of the case read in court, Ms. Mahanyu contended that the alleged difference is due to typing errors and it is not fatal. The important issue is that the appellant admitted the offence he was charged with. He prayed the appeal to be dismissed. The appellant did not make any rejoinder.

Having analyzed the rival submissions made by the parties herein, let me proceed with the determination of the grounds of appeal. Starting with the 1<sup>st</sup> and 2<sup>nd</sup> grounds of Appeal which basically answers the question on whether or not the appellant's plea was unequivocal plea of the guilty. To start with, it is noteworthy that in principle a person convicted of an offence on his own plea of guilty is barred from appealing against conviction. He can only appeal against the extent or

legality of the sentence imposed. [See section 360 (1) of the Criminal Procedure Act, Cap 20 R.E 2019 ("the CPA")].

The conditions which must exist conjunctively before conviction on unequivocal plea were discussed in the case of **Michael Adrian Chaki Vs The Republic, Criminal Appeal No.399 of 2019**, (unreported). The same are as follows;

- i) *The appellant must be arraigned on a proper charge. That is to say, the offence section and the particulars thereof must be properly framed and must explicitly disclose the offence known to law;*
- ii) *The court must satisfy itself without any doubt and must be clear in its mind, that an accused fully comprehends what he is actually faced with, otherwise injustice may result.*
- iii) *When the accused is called upon to plead to the charge, the charge is stated and fully explained to him before he is asked to state whether he admits or denies each and every particular ingredient of the offence. This is in terms of section 228 (1) of the CPA.*
- iv) *The facts adduced after recording a plea of guilty should disclose and establish all elements of the offence charged.*
- v) *The accused must be asked to plea and must actually plea guilty to each and every ingredient of the offence charged and the same must be properly recorded and must be clear.*

- vi) *Before a conviction on a plea of guilty is entered, the court must satisfy itself without any doubt that the facts adduced disclose or establish all the elements of the offence charged.*

In the case of **Michael Adrian Chaki** (supra) it was held that;

*"It is only if it can be clearly shown that an accused person has admitted all ingredients which constitute the offence charged that a court can properly enter a plea of guilty".*

I have perused the court's records and noted that the conditions stated in the case of **Michael Adrian Chaki** (supra) were met. The charge sheet was read and explained to the appellant who pleaded guilty thereto by stating clearly that he had a carnal knowledge with TJ against the order of nature. The appellant's plea reads as follows;

*"It is true that I had carnal knowledge of TJ against the order of the nature".*

It is also on record that the detailed facts of the case were read aloud in court and admitted by the appellant. Not only that in his mitigation the appellant expressed that he pleaded guilty to the offence charged against him because he was remorseful.

I have read the case of **Juma Tumbiliya** (supra) cited by the appellant in his submission and noted that the same is distinguishable from the case at hand because in that case there were three accused persons. The trial Magistrate did not indicate that each of the accused person had no objection to the admission of a gun and rounds of ammunition and the purported plea of guilty did not indicate the ingredients of the offence of armed robbery charged against the accused person. The situation in this case is different. I do not to be repetitive as I have

narrated herein above the appellant pleaded guilty by stating the ingredients of the offence he was charged with.

In addition to the above, It is not true that there is variance on dates of commitment of the offence indicated in the charge sheet and the facts read aloud in court. The charge sheet reads that the offence was committed on 24<sup>th</sup> on October 2021 and the handwritten record of the facts of the case read in court indicates that the offence was committed on 24<sup>th</sup> October 2021. I have noted that there is a typo error in the typed proceedings. However, the hand written court proceedings are the ones I am supposed to rely on. Therefore, there is no difference between the particulars indicated in the charge sheet and facts of the case read in court.

Having held that the appellant pleaded guilty to the charged and his plea of guilty was properly recorded, it is obvious that the remaining grounds of appeal have been rendered redundant except the one concerning the sentence imposed to the appellant.

With regard to the sentence imposed to the appellant, the same is proper since the law provides that where an accused person is found guilty of committing an offence under section 154 (1) (a) of the Penal Code shall be sentenced to life imprisonment. [See section 154 (2) of the Penal code].

In the upshot, this appeal is dismissed in its entirety.

Dated this 2<sup>nd</sup> day of June 2023.



**B.K.PHILLIP**

**JUDGE**