

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(DAR-ES-SALAAM DISTRICT REGISTRY)**

**AT DAR-ES-SALAAM**

**RM. CRIMINAL APPEAL NO. 159 OF 2022**

**DUNIA S/O SELEMANI @ PSQUARE ..... APPELLANT**

**VERSUS**

**THE REPUBLIC ..... RESPONDENT**

(Appeal from the decision of the Resident Magistrate Court of Kivukoni at Kinondoni)

(E. R. Rwehumbiza, PRM)

Dated 29<sup>th</sup> day of August 2022

In

Criminal case No. 183 of 2022

**JUDGMENT**

02 & 09/08/2023

**NKWABI, J.:**

The appellant, who was aged 36 years at the time of conviction and sentence, had been charged with rape contrary to section 130 (1) and (2) (e) and 131 (1) of the Penal Code [Cap 16 R.E. 2019]. It was claimed that the appellant committed the offence on 13<sup>th</sup> day of August 2022 at around 15:00 hrs at Coco beach within Kinondoni District in Dar-es-Salaam region. On that day, the appellant, is allegedly, had sexual intercourse with S. M. M. a girl aged 8 years.

Initially, when arraigned before the trial court, the appellant pleaded not guilty. He was released on bail. On the next date when the case was called on for hearing and the prosecution had two witnesses ready to testify, the appellant asked the trial court to remind him of the charge, where, on being reminded of the charge he was facing, he pleaded guilty.

It appears that facts of the case were reminded over to him and some exhibits produced and admitted in court. The appellant was recorded by the trial court to admit the facts of the case to be true. Then the trial court found the appellant guilty of the offence as charged and convicted him. Finally, it sentenced him to life imprisonment.

The appellant is before this Court challenging the legality of the conviction and sentence based on the main ground of appeal as set below:

- 1. "That, the learned trial magistrate grossly misdirected himself in fact and in law that the plea was equivocal."*

The appeal was disposed of by way of written submissions, the appellant appeared in person, unrepresented while the Respondent was represented by Ms. Christine Joas, learned Senior State Attorney.

In their submissions both parties are of the common ground that the plea taken was equivocal and cannot base conviction. Both parties exemplified the case of **Michael Adrian Chaki v. Republic**, Criminal Appeal No. 399 of 2019.

I agree that the position given in the above cited case was contravened by the trial court, so the conviction and sentence cannot stand. There is also another anomaly in the proceedings of the trial court. Though it is not a requirement of the law that exhibits be admitted where an accused person pleads guilty, in case the same are tendered and admitted, the exhibits ought to be read over and explained to the accused person(s). Failure to adhere to the requirement of the law makes such admitted facts (exhibits) liable for expungement. I proceed to expunge exhibit P1, P2, and P3 because they were not read over and explained to the appellant when they were admitted. In fact, they were not even cleared for admission because the appellant was not given a chance to comment on them.

Consequently, I allow the appeal. The conviction and sentence meted out by the trial court against the appellant are respectively quashed and set aside. I order for a trial de novo before another magistrate of competent

jurisdiction. Meanwhile, the appellant has to be under the custody of the police. Truly, he is eligible for police bail or court bail.

It is so ordered.

**DATED** at **DAR-ES-SALAAM** this 9<sup>th</sup> day of August 2023.



  
J. F. NKWABI

**JUDGE**