

**THE UNITED REPUBLIC OF TANZANIA
JUDICIARY**

**IN THE HIGH COURT OF TANZANIA
MBEYA DISTRICT REGISTRY**

AT MBEYA

CRIMINAL APPEAL NO. 96 OF 2023

(Originating from the District Court of Momba at Chapwa, in Criminal Case No. 105
of 2023)

EPHRAIM GIBSON SIMBEYE.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

Date of Last Order: 14/08/2023

Date of Judgement: 28/08/2023

Ndunguru, J.

The appellant, EPHRAIM GIBSON SIMBEYE is behind bars serving a life imprisonment sentence meted by the District Court of Momba District in criminal case No. 105 of 2023. The appellant was charged with and convicted on his own plea of guilty of unnatural offence contrary to section 154 (1) (a) and (2) of the Penal Code, Cap. 16 R.E 2022.

It was alleged in the particulars of the offence that on 24th day of April, 2023 about 0700hrs at Sogea area in Tunduma Township within

Momba District in Songwe Region the appellant did have carnal knowledge to one TME (name withheld to protect his dignity) a child boy aged at nine (9) years old against order of nature.

When the charge was read out and explained to the appellant, he responded: "*Ni kweli nilimlawiti*" which can be lightly translated as "it is true I sodomized him" then the trial Court entered a plea of guilty against the appellant.

Following the entered plea of guilty, the public prosecutor read out the facts which for the purpose of the decision I intend to make I feel pertinent to quote them verbatim. They are recorded as follows:

***"Public prosecutor:- on 24th April, 2023 at 07:00 hrs
at Sogea area in Tunduma township at Momba district
the accused unlawfully carnal sexually entered the
victim against his order of nature."***

Upon those facts the appellant is recorded to have repeated the previous answer that "*Ni kweli nilimlawiti*". Then the trial court proceeded to convict and sentence him as afore said.

Dissatisfied, the appellant is before this court preferring four (4) grounds of appeal which however, the relevant one is the 1st ground that:

The trial Magistrate erred in law and facts when convicted and sentenced the Appellant on equivocal plea of guilty.

At the hearing of the appeal, the appellant appeared in person, unrepresented while Mr. Mwakasege learned State Attorney appeared for the respondent/Republic.

When the appellant was invited to expound the ground of appeal he just prayed to adopt the grounds and prayed for this court to consider them.

On his part, Mr. Mwakasege readily supported the appellant's appeal on the first ground. He conceded that the appellant's plea was not complete since there were no facts adduced. He prayed the case be remitted to the trial court and a fresh plea be taken.

Indeed, Mr. Mwakesege's is right. As I have above quoted the facts which were adduced by the public prosecutor before the trial court, I cannot confidently find that the same were actually the facts which the law requires to be adduced after an accused person enters a plea of guilty.

It is an obligation to any trial court to observe to the conditions set by the Court of Appeal of Tanzania in the case of **Michael Adrian**

Chaki v. Republic [2021] TZCA 454, TanzLII which must be conjunctively met in order a valid conviction to be founded on an unequivocal plea of guilty. I feel constrained to reproduce these conditions as hereunder:

1. *"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;

2. *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.*

3. *When the accused is called upon to plea to the charge, the charge is stated and fully explained to him before he 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.*

4. *The fact adduced after recording a plea of guilty should disclose and establish all the elements of the offence charged.*

5. *The accused must be asked to plead and must actually plead guilty to each and every ingredient of the offence charged and the same must be properly recorded and must be clear (see **Akbarali Damji vs R.** 2 TLR 137 cited by the court in **Thuway Aloonay vs Republic** [1987] T.L.R. 92);*

6. ***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 elements of the offence charged."***

(Bold emphasis added).

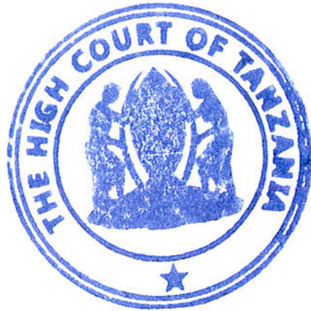
I also intend to remark here a warning as it was insisted by the Court of Appeal in **Safari Deemay v. Republic**, Criminal Appeal No. 269 of 2011 (CAT) (unreported), that:

*"Great care must be exercised especially where an accused is faced with a grave offence like the one at hand **which attracted life imprisonment...**"*

Owing to what I have endeavoured to explain, basing on the first ground of appeal I find the appeal meritorious. I therefore quash and set aside the proceedings including conviction and the sentence.

Following the fact that there was no trial, I order the case be remitted to the District Court of Momba District for re-arraignment before another magistrate with competent jurisdiction. Meanwhile, the appellant be handled to the police for them to return him to Momba District so that he can exercise his right to bail pending trial.

It is so ordered.




D.B. NDUNGURU

JUDGE

28/08/2023