

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(IRINGA SUB REGISTRY)  
AT IRINGA**

**CRIMINAL APPEAL NO. 70 OF 2023**

*(Original Criminal Case No. 34/2022 of the District Court of  
Wanging'ombe before Hon. J.E. Muhoni, SRM)*

**MICHAEL LUKINDO @ SIZYA ..... APPELLANT**

**VERSUS**

**REPUBLIC ..... RESPONDENT**

**JUDGMENT**

*20<sup>th</sup> & 21<sup>st</sup> November, 2023*

**I.C. MUGETA, J:**

The appellant who was convicted of attempted rape on his plea of guilty has appealed that the plea was equivocal and he is of unsound mind. The two complaints constitute the major themes of his four grounds of appeal.

The record does not show that he raised nor the court noticed elements of insanity from his conduct. Before me at appeal, he demonstrated such features though. Sophia Manjoti, learned State Attorney suggested that his insanity cannot be ruled out unless his mental state is examined by order of this court or the trial court. Due to what I shall decide in relation to the complaint on the nature of the plea, I refrain

from making orders for examination of the appellant's mental state. I just hold that there is no evidence upon which the issue can be decided.

The learned State Attorney supported the appeal on account of the fact that the plea of guilty was equivocal. The reason being that the charge sheet was defective in the particulars of the offence for not disclosing that the appellant attempted to "*procure prohibited sexual intercourse*". She cited **Isidori Patrice v. The Republic**, Criminal Appeal No. 224/2007, Court of Appeal – Arusha (unreported) to bolster her argument. In her view, a defective charge cannot support any plea being of guilty or not guilty.

I agree with the learned State Attorney. A charge of attempted rape which omits the phrase "*with intent to procure prohibited sexual intercourse*" in the particulars of the offence is defective. As rightly submitted by the learned State Attorney, this is the holding in the case of **Isidory Patrice** (supra).

In this case the particulars of the offence simply read:

*"That, Michael s/o Lukindo @ Sizya on 22<sup>nd</sup> day of December, 2022 at 19:00 hours at Igwachanya village within the district of Wanging'ombe, Njombe*

*Region, attempted to have carnal knowledge with one ... (name withheld) aged 05 years old knowing it is against the law”.*

I hold that those particulars of the offence were deficient and as argued by the learned State Attorney they make any subsequent plea untenable.

The appeal is allowed. The conviction is quashed and the sentence is set aside. I remit the file back to the trial court for reading a proper charge to the accused person and to deal with the appellant's claim of insanity according to the law.



*I. C. Mugeta*  
**I.C. MUGETA**  
**JUDGE**

**21/11/2023**

**Court:** Judgment delivered in chambers in the presence of the appellant in person, Sophia Manjoti, learned State Attorney and Reuben Lubango, Prosecutor for the Republic.

**Sgd. I.C. MUGETA**

**JUDGE**

**21/11/2023**