

**IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA  
(MBEYA SUB- REGISTRY)**

**AT MBEYA**

**CRIMINAL APPEAL NO. 165 OF 2023.**

*(Originating from the District Court of Chunya at Chunya in Criminal Case No.11 of  
2023 Hon. J.J Mhanusi, SRM dated 21.01.2023)*

**ISAYA LASTON MWAMAHONJE.....APPELLANT**

**VERSUS**

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

**JUDGMENT**

*29<sup>th</sup> March & 27<sup>th</sup> May, 2024*

**POMO, J**

Aggrieved by the decision of the District Court of Chunya in Criminal Case No. 11 of 2023, which convicted the appellant of the offence of rape contrary to sections 130 (1), 130 (2) (e), and 131 (1) of the Penal Code Cap 16 Revised Edition 2022 (the Penal Code), the appellant is now before this court appealing on the following grounds:

- 1. That the trial court erred in law when convicted and sentenced the appellant without regarding that the charge and admitted facts was improper as it failed totally to proof which in the narrated facts admitted by the appellant.*

2. *That the trial court erred in law when convicted and sentenced the appellant without regarding that failure to the prosecution side to tender birth certificate or clinic card of the victim the sentence is very excessive as per MSA Ca 90 R.E. 2019.*
3. *That the trial court erred in law when convicted and sentenced the appellant without giving him the chance of narrating the relevant facts of the charge by his own words to proof the same.*
4. *That the trial court erred in law when convicted and sentenced the appellant relying on caution statement exhibit PE without regarding that the same was failed to be complied by the law.*

Briefly, the facts of the case are as follows: On the 21st of January 2023, at Chalangwa Village within Chunya District in Mbeya Region, the appellant had carnal knowledge of a child, XXP (name withheld), aged four. When the charge was read to him, the appellant pleaded guilty to the offence. Following this admission of guilt and the acceptance of the facts constituting the offence, the trial court sentenced the appellant to life imprisonment. Unhappy with the decision, the appellant has appealed to this court on the four grounds listed above.

The appeal was argued through written submissions. The appellant fended himself, while the respondent, the Republic, was represented by Mr. Dominick Mushi, a learned State Attorney.

In his submission, which comprised a one-page argument, the appellant addressed the first and third grounds. He argued that the trial court failed to observe that the charge and admitted facts were improper as they did not specify which facts the appellant admitted to. He submitted that the trial court acted contrary to the case of **Laurent Mpinga vs. Republic**, 1983 TLR 166, and **Adan vs. Republic** [1973] EA 445. He further argued that he was not given a chance to explain the relevant facts in his own words to prove his admission before the trial court, and that the facts of the case were not read to him.

On the second ground, he stated that the sentence of the appellant was excessive since neither the birth certificate of the victim was tendered nor an affidavit from the parents or guardian to prove the age, as the age of the victim is crucial in deciding a case of rape.

Lastly, on the fourth ground, he argued that the trial court relied on the caution statement, exhibit PE1, which was obtained by torturing the appellant to the extent that his eye was injured. He prayed for his appeal to be allowed.

In reply to the submission regarding the first ground, the respondent argued that the charge sheet was read and explained to the appellant in Swahili, and he replied in Swahili, stating:

*"Ni kweli nimembaka mtoto huyo XXP mwenye umri wa miaka 4 kwa kuingiza uume wangu kwenye uke wake"*

Mr. Mushi argued that since the appellant entered a plea of guilty, the facts constituting the offence were read to him in Swahili. When the trial court asked about the facts, the appellant stated that all the facts read over and explained to him were true, correct, and admitted them. He averred that since the appellant admitted to the facts, including the age of the victim, the trial magistrate properly convicted him under the provision of section 131(1) of the Penal Code, Cap. 16 R.E.2022. That, Mr. Mushi further tendered the appellant's caution statement and the PF3 of the victim, which were admitted as PE1 without objection from the appellant.

He further argued that the assertion by the appellant in paragraphs 2 and 3 of his submission that the charge and facts were improper as they failed to specify which facts he admitted lacks merit in this appeal in that, per the trial court proceedings, as recorded on pages 1, 2, 3, and 4, clearly show that the prosecution read the facts, including the occurrence of the offence with which the appellant was charged.

Moreover, there is no law requiring the accused, after a plea of guilty, to explain the facts in his own words after they are read to him. The law stipulates that the prosecution is responsible for reading the facts, and thereafter, the accused has to be asked whether he admits the facts or not.

Regarding the facts, Mr. Mushi argued that when the facts constituting the offence were read to the accused, he replied that all the facts read over and explained to him were true, correct, and that he admitted them all. He submitted that since the appellant admitted to the facts, including the age of the victim, the trial magistrate properly convicted the him according to the law.

Submitting on the second ground of appeal, he argued that in a case where the accused person enters a plea of guilty, the tendering of exhibits is not a legal requirement. However, reading the content of the exhibit is essential, as it is founded upon an unequivocal plea of guilty. To support this argument, he cited the case of **Matia Barua vs. Republic**, Criminal Appeal No. 105 of 2015 (Unreported) as referred in the case of **Joel Mwangambako vs. Republic**, Criminal Appeal No. 516 of 2017 CAT at Mbeya (unreported), at pp. 8 - 13

It was his submission that the cautioned statement of the appellant was tendered in the trial court and admitted as exhibit PE1 without any objection, the appellant having replied thus:

*"I have no objection; I have perused the said documents and I have no objection for the admission"*

He further argued that the appellant's admission of his cautioned statement implies its admission in evidence. He emphasized that in criminal trials, the accused person who confesses freely and voluntarily is often the most reliable witness. To bolster his submission, he cited the case of **Ibrahim Ibrahim Dawa vs. Republic**, Criminal Appeal No. 260 of 2016 CAT at Mtwara (unreported), page 9.

He invited the court to consider **Section 360(1) of the Criminal Procedure Act, Cap 20 R.E. 2022**, which reads:

*"S.360(1) - No appeal shall be allowed in the case of any accused person who has pleaded guilty and has been convicted on such plea by the subordinate court except as to the extent of legality of the sentence."*

Further, the respondent submitted further submitted on the incidences outlined on the occasions in which a plea of guilty may be challenged. On this, he referred this court to the case of **Laurence Mpinga vs. Republic**, [1983] TLR 166, as referred at page 9 in **Joel**

**Mwangambako's case (supra).** It was held that the accused may challenge the conviction on any of the following grounds:

*"Such an accused persons may challenge the conviction on any of the following grounds:*

- 1. That even taking into consideration the admitted facts, his plea was imperfect, ambiguous or unfinished and, for that reason, the lower court erred in law in treating it as plea of guilt.*
- 2. That he pleaded guilty as a result of mistake or misapprehension.*
- 3. That the charge laid at his door disclosed no offence known to the law.*
- 4. That upon admitted facts he could not in law have been convicted of the offence charge."*

He argued that none of the occasions listed above fit the grounds of complaint raised by the appellant. The respondent is of further assertion that the appellant attempted to align his case with the principles stated in the aforementioned case; however, his conviction was firmly based on his own unequivocal plea of guilty.

Having considered the submissions from both sides, the grounds of appeal, and the court record as well, the main point for determination is whether the appellant's plea before it was equivocal.

To address this, I have reviewed the record, noting that the appellant was arraigned before the trial court on January 24, 2023. The charge was read and explained to him in Swahili, to which he pleaded:

*'Ni kweli nimembaka mtoto huyo Nolin Paul mwenye umri wa miaka 4 kwa kuingiza uume kwenye uke wake.'*

Thereafter, the facts were read to the appellant by the Republic, and the trial court asked the him if the facts were correct and if he admitted to them. The appellant responded:

*'All facts read over and explained to me are true, correct and I admit them all.'*

Following that, the Republic tendered the PF3 and cautioned statement of the victim to be admitted as exhibits. The appellant had this to say in relation to the tendered documents:

*'I have no objection. I have perused the said documents and I have no objection for the admission'.*

Subsequent to his unequivocal plea of guilty, in my view, the appellant cannot be heard challenging the conviction. What he is attempting to do is an afterthought. It is trite law that in the case of a plea of guilty, the appellant can only appeal against the sentence, not the conviction. This was held in the case of **Ramadhan Haima v. The DPP**, Criminal Appeal No. 213 of 2009, CAT (unreported), that:



***"Where plea of guilty is unequivocal, the appellant appeal on conviction cannot stand"***

The conviction can only be challenged under certain circumstances, as pointed out in the case of **Mkiwa Nassoro Ramadhani vs. Republic**, Criminal Appeal No. 187 of 2013, CAT (unreported), that:

*"Appeals which result from a plea of guilty are governed by section 360 of the Criminal Procedure Act. Sub-section (1) to that section bars appeals of such nature except as to the extent or legality of the sentence. However, courts have enunciated, through case law, circumstances under which an appeal can still lie where the appellant had pleaded guilty to the charge. They include the cases of **Lawrence Mpinga v. Republic**, [1983] T.L.R 166 and **Josephat James v. Republic**, Cr. Appeal No. 316 of 2010, CAT, Arusha Registry (unreported), just to mention some. In the latter case of **Josephat James v. Republic** (supra), the Court stated that under certain circumstances, an appeal arising from a plea of guilty may be entertained by an appellate court where: -*

*"The plea was imperfect, ambiguous or unfinished and, for that reason, the lower court erred in law in treating it as a plea of guilty;*

*(i) An appellant pleaded guilty as a result of a mistake or misapprehension;*

*(ii) The charge levied against the appellant disclosed no offence known to law, and*

*(iii) Upon the admitted facts, the appellant could not in law have been convicted of the offence charged. (See: **Laurence Mpinga v. Republic, (1983) T.L.R. 166 (HC)** cited with approval in **Ramadhani Haima's case (Cr. Appeal No. 213 of 2009, CAT, (unreported).**)"*

But in the case at hand, there are no such circumstances as those stated in the case of **Mkiwa Nassoro Ramadhani** (supra).

I am therefore of the considered view that the plea of guilty entered by the appellant is unequivocal. He fully understood the charge against him since the same was well explained, and the facts of the case were read to him, as indicated at pages 2 and 3 of the trial court record. The appellant did not dispute or challenge the truth of these facts. Therefore, the elements of the offence were properly proved. Unhastatingly, therefore, I hold that the conviction and sentence

imposed on the appellant were appropriate and properly justified. There is nothing to fault the trial court. In the event, I find this appeal devoid of merit, and hereby dismiss it.

It is so ordered

Right of Appeal explained

DATED at MBEYA this 27<sup>th</sup> day of May, 2024



  
**MUSA K. POMO**

**JUDGE**

**27/05/2024**

Judgment delivered in chamber in presence of Ms. Lilian Chagula, learned state attorney for the republic. Also, in presence of the Appellant unrepresented

  
**MUSA K. POMO**

**JUDGE**

**27/05/2024**