

IN THE HIGH COURT OF TANZANIA

(TABORA DISTRICT REGISTRY)

AT TABORA

DC CRIMINAL APPEAL NO. 74 OF 2023

**(Appeal from the Uyui District Court, Criminal Case No. 28 of
2023)**

KATANGA S/O JOHN APPELLANT

VERSUS

THE REPUBLIC RESPONDENT

JUDGMENT

Date of Judgment: 10/05/2024

Date of last order: 24/04/2024

A. Mambi, J

In the District Court of Uyui, the appellant, was charged for the offence of rape contrary to sections 130 (1) (2) (e) and 131 (1) of the Penal Code, [Cap. 16 [R.E. 2019]. Briefly, the prosecution facts show that the appellant was alleged to have carnal knowledge of one young girl aged 14 years. When the charge and facts was read to the caused (now the appellant) at the trial court, the accused admitted all facts and charges. The proceedings at pages 2,3 and 4 reveals that whenever the accused was asked about the charge and facts, the accused answered using the following Swahili words:

"NI KWELI NA NI SAHIHI"

As it was before the trial Court, before this Court the appellant appeared in person and unrepresented. His memorandum of appeal raised three grounds of appeal as follows;

1. That, the case for prosecutions was not proved against the appellant beyond reasonable doubt as required by the law.
2. That, the trial magistrate erred in law and in facts by not taking into consideration the defence raised by the appellant and by not evaluating the evidence properly as required by the law under section 312(1) of the Criminal Procedure Act Cap 20 [RE 2022].
3. That, the defence of the appellant was sidelined by the learned trial magistrate at the time of composing the judgment.

On the other hand, the Republic was represented by the learned State attorney Ms Anneth Makunja. The learned State Attorney briefly submitted that section 360 of the Criminal Procedure Act, Cap 20 bars the appellant from appealing since he was convicted and sentenced on his own plea. She referred the decision of the court in ***LAURENCE MPINGA VS R 1983 TLR AT PAGE 166.***

In response, the appellant a layman and self-confessed illiterate person, had nothing vital to add to the contents of his ground of appeal which he requested to be adopted.

Having summarised submission from both the appellant and prosecution, this court is of the view that the main issue in this appeal is whether the appellant is bared by section 360 of the Criminal Procedure Act, Cap 20 from appealing to this court. The court also needs to determine if the appellant was convicted and sentenced on his own plea, whether such

plea was equivocal or unequivocal. My perusal and findings from the records reveals that that, the appellants seem to be convicted on his own plea of guilty. It is common ground that appellant's conviction followed his own plea of guilty to the charge which was levelled against him. Generally, under section 360 (1) of the Criminal Procedure Code Cap. 20 of the Revised Edition, 2022, the right to appeal as regards a person who properly pleads guilty to the charge is qualified. This provision stipulates that no appeal **shall** be allowed in the case of any accused person who has pleaded guilty and has been convicted on such plea by a subordinate court except as to the extent or legality of the sentence. The word "**shall**" under the provision of the law (section 360 (1) of the Criminal Procedure Act) Cap 20 [R.E 2022] implies mandatory and not option and that is the legal position under the Interpretation of Laws Act, Cap 1 [R.E.2019]. However, there are number of court decisions that has elaborated on exception to section 360 (1) of the Criminal Procedure Act) Cap 20 [R.E 2022]. To that effect, I wish to make reference to the decisions of the court in *Laurence Mpinga v. Republic [1983] T.L.R. 166* and *Josephat James v. Republic, Cr. Appeal No. 316 of 2010, CAT, Arusha Registry (unreported)*. In the latter case of *Josephat James v. Republic* the Court stated that under certain circumstances an appeal arising thereof, may be entertained by an appellate court where the following conditions exist:

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

- (iii) The charge levied against the appellant disclosed no offence known to law, and
- (iv) 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)***).

The above position of the law from the case studies is clear that one of the grounds which may justify the Court to entertain an appeal based on a plea of guilty is where it may be successfully established that 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. This goes to insist therefore that for one to be convicted on a plea of guilty, the court must in the first place be satisfied that the such plea amounts to an admission of every constituent of the charge and the admission is unequivocal. The court in ***Rep. v. Yonasani Egalu and 3 others (1942-1943) IX-X E.A.C.A. 65*** observed as a matter of law that, in any case in which a conviction is likely to proceed on a plea of guilty (in other words, when an admission by the accused is to be allowed to take the place of the otherwise necessary strict proof of the charge beyond reasonable doubt by the prosecution) it is most desirable not only that every constituent of the charge should be explained to the accused, but that he should be required to admit or deny every constituent of the offence, and that what he says should be recorded in a form which will satisfy an appeal court that he fully understood the charge and pleaded thereto unequivocally.

See ***MSAFIRI MGANGA VERSUS THE REPUBLIC, CRIMINAL APPEAL NO. 57 OF 2012*** at page 2 and 3.

Equally important is the fact that the facts to be adduced in support of the charge must disclose the ingredients of the charged offence. See ***Saidi Omari Kombo v. Republic, [2000] T.L.R. 315 and Ngasa Madina v. Republic, Criminal Appeal No. 151 of 2005, CAT, Mwanza Registry (unreported)***.

In Ngasa ***Madina v. Republic (supra)***, the appellant had pleaded guilty to the charge of rape contrary to sections 130 and 131 of the Penal Code. Upon being satisfied that the facts did not disclose the offence of rape, the Court held the appellant's plea to have been equivocal; hence a fit case in which an accused convicted on his own plea of guilty may appeal against for. The court thus held that under such circumstances it could not be regarded that the plea was unequivocal.

It is trite law that the accused plea must be made voluntary after the accused has been **informed of** and **understands** his or her rights (emphasis added). Before I addressed myself to the submission by the learned State Attorney I went through the trial records to satisfy myself if the appellant/the accused did plea or not as contended by the learned State Attorney. Having carefully gone through the proceedings and judgment of the trial court, I find the main issue is whether or not the appellant plea was properly taken and recorded or not. This means that the plea must made voluntary after the accused has been **informed of** and **understands** his or her rights (emphasis added). It is trait law that an accused has to state if he admits all those essential elements of the

offence charged, the magistrate must record what the accused has said, as nearly as possible in his own words, and then formally enter a plea of guilty. For instance in the case of **Adan v Republic (1973) EA 445**, cited by the case of **Khalid Athumani v. R, Criminal Appeal NO. 103 OF 2005**, (unreported), it was explained that:

"When a person is charged, the charge and the particulars should be read out to him, so far as possible in his own language, but if that is not possible, then in a language which he can speak and understand. The magistrate should then explain to the accused person all the essential ingredients of the offence charged. If the accused then admits all those essential elements, the magistrate should record what the accused has said, as nearly as possible in his own words, and then formally enter a plea of guilty. The magistrate should next ask the prosecutor to state the facts of the alleged offence and, when the statement is complete, should give the accused an opportunity to dispute or explain the facts or to add any relevant facts. If the accused does not agree with the statement of facts or asserts additional facts which, if true, might raise a question as to his guilty, the magistrate should record a change of plea to "not guilty" and proceed to hold a trial. If the accused does not deny the alleged facts in any material respect, the magistrate should record a conviction and proceed to hear any further facts relevant to sentence. The statement of facts and the accused's reply must, of course, be recorded."

I have gone through the record and found the plea of the appellant was unequivocal. The record shows that the charge was read over and explained to the appellant on three occasions at pages 2, 3 and 4. For instance the proceedings at page 2 show that when the facts were read the appellant as follows;

“NI KWELI NA NI SAHIHI”

Similarly, the appellant at page 3 of the proceedings repeated thrice the same words when he stated: “NI KWELI NA NI SAHIHI”

This implies that the plea was unequivocal as required by the law. The facts adduced supported the charge sheet. In my view I am satisfied that the appellant admitted every constituent of the charge of rape and he pleaded guilty to every element unequivocal.

Having found that the appellant was convicted and sentenced basing on his own plea, could the appellant appeal against the decision of the trial court? The answer is NO since section 360 (1) of CPA bars an appeal from the decision of the court that resulted from the appellants’ own plea of guilty. This means the appeal before this court is incompetence for contravening the above provision of the law. Reference can also be made to the decision of the court of Appeal of Tanzania in ***the Director of Public Prosecutions v. ACP Abdalla Zombe and 8 others*** Criminal Appeal No. 254 of 2009,

CAT (unreported) where the court held that:

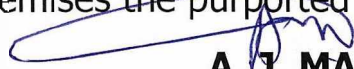
“this Court always first makes a definite finding on whether or not the matter before it for determination is competently before it. This is simply because this Court and all courts have no jurisdiction, be it statutory or inherent, to entertain and determine any incompetent proceedings.”

Reference can also be made to the decision of the court in ***Joseph Ntongwisangue another V. Principal Secretary Ministry of finance & another Civil Reference No.10 of 2005*** (unreported) where it was held that:

"In situation where the application/appeal proceeds to a hearing on merit and in such hearing the application/appeal is found to be not only incompetent but also lacking in merit, it must be dismissed. The rationale is simple. Experience shows that the litigations if not controlled by the court, may unnecessarily take a very long period and deny a party in the litigation enjoyment of rights granted by the court.

From the foregoing brief discussion, I am of the settled mind that the purported appeal offends section 360 (1) of CPA 20 and cannot stand as a valid appeal. In my considered view, since the appellant appealed against his own plea, it is as good as saying there is no appeal at this court.

In the circumstance and from the reasons stated above I find there is no proper appeal before this court. The decision of the trial District court is upheld. In the premises the purported appeal is accordingly dismissed

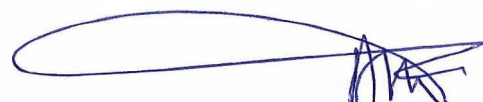


A. J. MAMBI

JUDGE

10/05/2024

Judgment delivered in Chambers this 10th day of May, 2024 in presence of both parties.

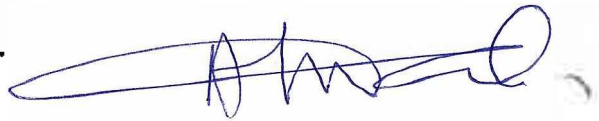


A. J. MAMBI

JUDGE

10/05/2024

Right of appeal explained.

A handwritten signature in blue ink, appearing to read 'A. J. Mambi', with a long horizontal stroke extending to the left.

A. J. MAMBI

JUDGE

10/05/2024