

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

CRIMINAL APPEAL NO. 7910 OF 2024

*(Original Criminal Case No. 55/2022 of the District Court of Mufindi at Mafinga
before. Hon. S.E. Kyungu, RM)*

FADHIL JOSEPH APPELLANT

VERSUS

REPUBLIC RESPONDENT

JUDGMENT

13th & 13th June, 2024

I.C. MUGETA, J:

The appellant was convicted of two counts of statutory rape. According to the charge sheet, on 14/8/2022 and 28/8/2022, the appellant did have carnal knowledge of the victim who is a girl aged 16 years. Considering the age of victim, the charge sheet is silent on the issue of consent. Having pleaded guilty, he was sentenced to 30 years imprisonment in both counts. The sentence was ordered to run concurrently. Aggrieved by both the conviction and sentence, he has filed this appeal.

His first ground of appeal is that the plea was equivocal. This, in my view, is his main complaint out of his seven grounds of appeal.

On hearing of the appeal, he offered the Republic his right to begin. Before Majid Matitu, learned State Attorney took the flow, I put to his

attention the variance between the charge sheet and the facts that were presented to prove the offence in that while the charge sheet is silent about consent, the facts are clear that the carnal knowledge was procured by force. I required him, among other things, to address me on that issue.

Mr. Majid readily conceded that the variance makes the plea equivocal as the appellant could not have understood if he was charged on account of using force or having carnal knowledge of a child in terms of section 130(1),(2)(e) and 131(1) of the Penal Code [Cap. 16 R.E 2022]. He prayed for retrial order while on rejoinder the appellant prayed the appeal to be allowed.

Indeed, the accused pleaded guilty to both counts of rape and the allegation that the victim was aged 16 years was proved by a birth certificate which was tendered and admitted as exhibit P1.

I understand, when one has carnal knowledge of a child, it does not matter whether there was consent. However, it is a different story when the accused pleads guilty. As the charge does not refer to the use of force, the fact must be clear if force was or was not used to avoid variance with charge sheet.

In this case the accused pleaded guilty that he had carnal knowledge of the girl of 16 years. When the prosecutor presented the facts, he stated that in both incidents the appellant used force. This brings a confusion on whether

there was consent but for the victim being a minor or despite being a minor force was used too.

It is settled that a plea of guilty is deemed unequivocal when it is made on clear facts which proves the elements of the offence. In the case of **Michael Adrian Chaki vs. Republic**, Criminal Appeal No. 399 of 2019, Court of Appeal – Dar es Salaam (unreported) the Court stated:

"... there cannot be an unequivocal plea on which a valid conviction may be founds unless these conditions are conjunctively met:

- 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 plead to the charge, the charge is stated and fully explained to him before he is 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 facts 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 TLR137 cited by the Court in Thuway Akoonay 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 the elements of the offence charged".*

As the facts are confusing on whether the accused used force or the victim despite being a minor consented, it cannot be said that the appellant comprehended what he actually faced. Consequently, I hold that the plea of guilty entered by the appellant is unequivocal.

The appeal has merits. I order a retrial of this case before another magistrate of competent jurisdiction.



Mugeta
I.C. MUGETA

JUDGE

13/6/2024

Court: Delivered in chambers in the presence of the appellant and Majid Matitu, learned State Attorney for the respondent.

Sgd. I.C. MUGETA

JUDGE

13/6/2024