

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IRINGA SUB - REGISTRY
AT IRINGA

CRIMINAL APPEAL NO. 11974 OF 2024

(Arising from District Court of Kilolo at Kilolo Original
Criminal Case No. 7377 of 2024)

MATHAYO JONAS KITOSI APPELLANT

VERSUS

THE REPUBLIC RESPONDENT

JUDGMENT

Date of last Order: 21/06/2024
Date of Judgement: 28/06/2024

LALTAIKA, J.

The Appellant herein **MATHAYO JONAS KITOSI** was arraigned in the District Court of Kilolo at Kilolo on 19/3/2024 charged with one count of rape c/s 130(1) (2) (e) and 131(3) of the Penal Code Cap 16 RE 2022. He pleaded guilty. He was convicted as per his plea of guilty and sentenced to life imprisonment. Dissatisfied, the appellant has appealed to this court on five grounds. Irrespective of a few grammatical and typographical errors, I

choose to reproduce them for ease of reference and record keeping, as hereunder:

1. *That, the learned trial magistrate erred both in law and fact to convict and sentence the appellant without considering that the plea of guilty was equivocal since the facts of the case are insufficient as they failed to disclose why the victim was late to be examined and why the appellant was not arrested on the material day if it really happened on the said date.*
2. *That, the learned trial Resident Magistrate erred in law and fact for admitting PF3 as exhibit without considering that the victim was examined after elapse of time i.e from 29.04.2023 to 03.05.2023 and the same was not read by expert who filed it.*
3. *That, the learned trial Resident Magistrate erred in law and fact to convict and sentence the appellant without considering that the age of the victim was not proved beyond reasonable doubts. Hence the registration card of school is not sufficient proof for the age of the victim since the parents, victim and birth certificate are in the good position to prove such age.*
4. *That, the learned trial Resident Magistrate erred in law and sentence the appellant without considering that no caution statement of the appellant was brought before the court of law as exhibit prosecution side to corroborate the said plea guilty of the appellant.*
5. *That, the learned trial Resident Magistrate erred in law and fact to convict and sentenced the appellant without afforded him a right to mitigate.*

When the appeal was called for hearing on the 21st day of June 2024, the Appellant appeared in person. The respondent Republic on the other hand, appeared through **Mr. Nashon Simon**, learned State Attorney. The Appellant, not being learned in law, opted to reserve his rights to a rejoinder

while paving the way for the learned State Attorney to respond to the grounds hitherto filed.

Taking up the podium, Mr. Simon declared boldly that he was not in support of the appeal. He proceeded to submit as summarized in the next few paragraphs.

The learned State Attorney started by referencing **Section 360(1) of the Criminal Procedure Act Cap 20 RE 2022**, which states that no appeal shall be preferred based on a conviction from one's own plea except in relation to the legality of the sentence. He argued that the appeal should have been limited to the legality of the sentence.

Mr. Simon then raised the question of whether the appellant's plea was equivocal, addressing the requirements for an equivocal plea. Firstly, he asserted that the plea was perfect, citing page 1 where the appellant admitted to having carnal knowledge of Mariamu d/o Jackson Luhwago, his uncle's daughter, with the statement "**Nakubali kuwa Nilifanya Mapenzi na Mariamu binti Jackson Luhwago ambaye ni mtoto wa Mjomba wangu.**" Mr. Simon argued that this statement required no further information.

Secondly, regarding ambiguity, he submitted that there was none and that even an ordinary person could understand the statement given. Thirdly, on the issue of misapprehension, he argued that the plea was clear and understandable, noting that the appellant went beyond what was read from the charge, demonstrating his understanding.

Fourthly, Mr. Simon contended that the charge disclosed the offence, mentioning the appellant by name, the date of the incident, the place of commission, and the main requirement of carnal knowledge, including the victim and her age (8 years). Lastly, he argued that the facts disclosed the elements of the offence, mentioning the appellant's name, the victim's name, and the element of penetration, as indicated in the third and fourth paragraphs of the second page and paragraph six, respectively.

Mr. Simon concluded that the plea had no challenge as it indicated the appellant understood the charges and facts read to him, citing the appellant's response "Maelezo hayo ni sahihi" after the facts were read out. He referenced Section 228(2) of the CPA, which mandates that once an accused pleads guilty, the plea must be recorded, and the magistrate should convict and sentence unless there are sufficient reasons to the contrary. He stated

that it was proper for the magistrate to convict the appellant as soon as he pleaded guilty.

Mr. Simon then addressed the issue of mitigation, noting that while it was not done, neither were aggravating factors presented by the prosecution. He acknowledged that it is a legal requirement to grant the accused time to mitigate for sentencing consideration. However, he argued that the omission did not prejudice the accused because Section 31(3) of the Penal Code Cap 16 prescribes only one sentence, life imprisonment, for the offence charged. He asserted that since no right was prejudiced and there was no alternative sentence, the sentence was appropriate.

Finally, Mr. Simon submitted that the appeal should be dismissed as the appellant was convicted on his own plea, and the trial court's decision should be upheld.

In his rejoinder, the Appellant requested the court to consider his grounds. Additionally, he mentioned that the police officer who escorted him to court urged him to plead guilty to receive a reduced sentence. As it was his first time in court, he believed the officer's advice was correct. The Appellant asserted that he did not commit the alleged offence. Upon leaving

police custody, the officer informed him that he had no viable case and persuaded him to plead guilty. The Appellant expressed confusion over the officer's motives in doing so. Finally, he prayed for his grounds of appeal to be accepted and, if feasible, for his release.

I have dispassionately considered the grounds of appeal and the rival submissions. I find it very difficult to accept the learned State Attorney's submission on equivocality of the plea. The Appellant alleges that he was coerced by a police officer into pleading guilty under the promise of a reduced sentence. This raises concerns about the voluntariness and fairness of the plea, as it suggests the plea may not have been made freely or with full understanding of its implications.

I have studied the casefile, and it appears that the public prosecutor was a police officer. No one can rule out possibilities of a quickly secured conviction in the pretext of a plea of guilty. I for one, think convictions based on one's plea of guilty should not be extended to offences attracting long jail terms. They are suited to traffic offences or some other "misdemeanours."

As a first-time offender unfamiliar with legal procedures, the Appellant claims he misunderstood the implications of pleading guilty. He asserts

innocence and contends that his decision was influenced by misleading advice and pressure from the police officer rather than a true admission of guilt.

The Appellant, though not learned in law and lacks representation has clearly raised a significant concern that he may have been wrongfully convicted. It is in the public interest to uphold the principles of justice and fairness. Allowing the appeal would demonstrate the court's commitment to ensuring fair trials and protecting individuals from wrongful convictions based on coerced pleas or procedural flaws.

In the upshot, I allow the appeal. I hereby quash conviction and set aside the sentence. I order that the Appellant **MATHAYO JONAS KITOSI** be released from prison forthwith unless he is being withheld for any other lawful purpose.

It is so ordered.

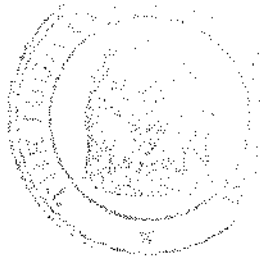


E.I. Laltaika

**E.I. LALTAIKA
JUDGE
28.06.2024**

Court

This judgement is delivered under my hand and the seal of this court this 28th day of June 2024 in the presence of **SAULI MAKORI**, learned State Attorney for the Respondent and the Appellant who appeared in person, unrepresented.



E.I. Laltaika

**E.I. LALTAIKA
JUDGE
28.06.2024**

Court

The right to appeal to the Court of Appeal of Tanzania is fully explained.



E.I. Laltaika

**E.I. LALTAIKA
JUDGE
28.06.2024**