

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(SUMBAWANGA DISTRICT REGISTRY)**

**AT SUMBAWANGA**

**DC: CRIMINAL APPEAL NO. 15 OF 2022**

**IBRAHIMU S/O MOSES SIMLINGA @ BURA ..... APPELLANT**

**VERSUS**

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

(Appeal from the decision of the District Court of Kalambo at Matai)

(N. K. Temu, RM I)

Dated 30<sup>th</sup> day of August 2021

In

Criminal case No. 103 of 2021

**JUDGMENT**

25/05 & 16/08/2022

**NKWABI, J.:**

The appellant, a young man currently aged 27 years, was charged with rape contrary to section 130 (1) and (2) (e) and 131 (1) of the Penal Code [Cap 16 R.E. 2019]. It was claimed that the offence was committed by the appellant on 9<sup>th</sup> day of March 2020 at Kisumba village within Kalambo District in Rukwa region. On that day, the appellant had sexual intercourse with A.N. a girl aged 15 years and a form two student of Chisenga Secondary School.

The appellant pleaded guilty to the charge. When the facts of the case were read over to the appellant, the appellant admitted them to be true. That was immediately after he had said he had no objection of admission of documentary exhibits. Due to the admitted facts of the case, the trial court found the appellant guilty of rape and proceeded to convict him accordingly. It then sentenced the appellant to thirty years imprisonment.

He is now before this Court challenging its legality based on five grounds of appeal as set below:

1. *"That, I did not commit the serious offence as claimed by the crown prosecution side.*
2. *That, the trial Court erred in law point and fact by conviction and sentence the appellant relying on plea of guilty for the appellant while it fail to note out that the language used by the court were not known to the appellant.*
3. *That, your lordship, the trial Court erred in law point and fact by convicting and sentence the appellant while the appellant he alleged to rape the victim on 09.03.2020 but he were arrested and convicted on 30.08.2021 the almost one year plus. My lord this brings doubts in the eye of law.*
4. *That, the trial magistrate court totally wrongly in law point and fact by convicting and sentence the appellant relying on plea of guilty for the appellant while he failed to note out that the appellant was denied an*

*opportunity to say or dispute or add anything relevant to facts something which whole process to be nullity. Please refer the case of Adan v/s REP. [1973] EA 445 at page 446.*

- That, the trial magistrate total wrongly in both conviction and sentence for the appellant while misobserved that the charge against the appellant were not read and explained to the accused person twice since the appellant was not normal in psychology. And it was my first time to stand before the court."*

On the hearing day, the appellant appeared in person, unrepresented while the Respondent was represented by Ms. Marietha Maguta learned State Attorney.

The Appellant had nothing substantive to expound on his grounds of appeal. He merely prayed this Court to adopt the grounds of appeal as his submissions.

Ms. Maguta did not purchase the appeal. She contented, that this is an appeal where the appellant was convicted on his own plea. She referred me to the case of **Lawrence Mpinga v Republic**, [1983] T.L.R. 166. The appellant can appeal on equivocal plea. She further asserted that the

appellant pleaded guilty and admitted the facts of the case. The plea was unequivocal, stressed Ms. Maguta. She then prayed that the appeal be dismissed as it is meritless.

In rejoinder submission, the Appellant brought up a claim that he was severely beaten up, that is why he pleaded guilty in court. He added that he does not know what to say.

I have anxiously considered this appeal in respect of the stance of both parties. I am of a view that the plea was unfinished in the sense that the facts of the case were not expounded (explained to the appellant). That is an anomaly in the proceedings of the trial court. My view, I believe, is fortified by the case of **Samson Marco & Another V. Republic**, Criminal Appeal No. 446/2016 where the Court of Appeal of Tanzania authoritatively stated:

*"Essential elements or ingredients to a charge of armed robbery as shown in particulars of offence must be expounded and explained to an accused person when the prosecution narrates the facts. What the prosecutor did was to merely repeat the same words appearing in the*

*"Particulars of the Offence" of armed robbery without elaboration and relating to the ingredients constituting the charge facing the appellants."*

Another anomaly is that, though it is not a requirement of the law that exhibits be admitted where an accused person pleads guilty, in case the same are tendered and admitted, the exhibits ought to be read over and explained to the accused person(s). Failure to adhere to the requirement of the law makes such admitted facts liable for expungement. I proceed to expunge exhibit P1, P2, P3 and P4 because they were not read over and explained to the appellant after they were cleared for admission.

Consequently, I allow the appeal. The conviction and sentence meted out by the trial court against the appellant are respectively quashed and set aside. I order for a trial de novo before another magistrate of competent jurisdiction. Meanwhile, the appellant has to be under the custody of the police. Indeed, he is eligible for police bail or court bail.

It is so ordered.

**DATED at SUMBAWANGA** this 16<sup>th</sup> day of August 2022.



*J. F. Nkwabi*

**J. F. NKWABI**

**JUDGE**