

TANZANIA / JUDGMENT

Criminal Appeal 25204 of 2024 Judgmnet NangelaJ

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA IN THE HIGH COURT OF TANZANIA SUMBAWANGA DISTRICT REGISTRY AT SUMBAWANGA CRIMINAL APPEAL NO.25204 OF 2024 BETWEEN ADAM ATHUMAN ADAM.....APPELLANT VERSUS THE REPUBLIC..... RESPONDENT (Appeal originating from Criminal Case No. 14679 of 2024 at the District Court of Nkasi at Namamnyere) Last order: 21st October 2024 Judgement: 11th December 2024

JUDGMENT

NANGELA, J.: At the District Court of Nkasi at Namanyere, Rukwa Region (hereafter to be referred to as the "Trial Court"), an accused person, now the Appellant herein, Adam s/o Athuman Adam, was charged with offences comprised of the two counts. His first count was rape contrary to Section 130 (1) and

(2) (e) and Section 131 (1) and (3) and his second count was unnatural offence contrary to Section 154 (1) (a) and (2), both of the Penal Code, Cap. 16 RE 2019 (now R.E. 2022). Page 1 of 11 According to the records of this appeal, the appellant was found guilty of both offences, convicted on his own plea of guilty, and, subsequently, was sentenced to serve life imprisonment in respect of both counts. His sentences were to run concurrently. Aggrieved by the conviction and sentence imposed on him by the trial court, he preferred this appeal. In his memorandum of appeal, the appellant fielded five

(5) grounds of appeal, as hereunder quoted:

1. „That the trial court erred in law and fact by convicting the accused person based on an equivocal plea since it was entered without full explanation and itemization of the ingredients of offence and recording of the appellant's response thereto in his own words.
2. That, the trial court erred in law and fact by convicting the appellant on plea of guilty while he did not admit all the facts narrated by the prosecution establishing the Page 2 of 11 ingredient of offence charged on the age of the victim and other essential

facts.

3. That the trial court erred in law point and fact by convicting the appellant on plea of guilty on the serious offence who was a layman unrepresented and did not understood (sic) the nature and implication of plea of guilty.
4. That, the trial court erred in law and fact by convicting the appellant on plea of guilty while there was contradiction on offence committed and confessed between Exhibits P1 and P3.
5. That, the trial court erred in law and fact by convicting and sentencing the appellant, who was a layman from a rural village, on the serious offence without informing that he is entitled Page 3 of 11 to apply for a legal aid certificate and obtain full representation.' Having looked at his grounds of appeal, I find that in essence, his complaint hinges on one ground, that is, he was convicted on an equivocal plea of guilty. At the hearing of this appeal, the appellant appeared in person, whereas the respondent, Republic, had the legal services of Ms. Ashura Pazi, the learned state attorney. Arguing in support of the appeal, the appellant had nothing to add; rather, he prayed that this court be pleased to adopt his five grounds of appeal filed with this court. However, Ms. Pazi strenuously resisted the appeal. She submitted that the appellant was rightly convicted of having raped and committed an act of unnatural offence against a victim aged 3 years old. Ms. Pazi submitted that, when the accused was charged before the trial court, he pleaded guilty to the offences he was charged with. She contended further that, on 7/6/2024, the prosecution read the particulars of the offences to the accused person, who readily admitted such particulars. She submitted Page 4 of 11 that, based on the appellant's own plea of guilty, the trial court proceeded to find him guilty and convicted accordingly. Ms. Pazi submitted that, in line with Section 360 (1) of the Criminal Procedure Act, CAP. 20 R.E. 2022 does not allow appeal in a situation where the accused unequivocally pleaded guilty to the offence charged unless the appellant is challenging the lawfulness of his sentence. However, Ms. Pazi submitted that, since the appellant is not challenging his sentence, as per the law, his appeal is baseless. In rejoinder, the appellant stuck to his prayers, disagreeing with the learned State attorney's submission. He contended that there was insufficient evidence, which would have entitled him to be set free. I have thoroughly gone through the records of the District Court. I have, as well, read between the lines, the appellants' grounds of complaints, his submission, and that of Ms. Pazi. First and foremost, ordinarily, as a general rule, and as rightly submitted by Ms. Pazi, a person convicted of his own plea of guilty has no room in law to appeal against such a conviction. Page 5 of 11 This is provided under Section 360(1) of the Criminal Procedure Act, Cap. 20, Cap. 20 R.E. 2022. Several decisions have considered and relied on this statutory principle. They are of not just by this court but also by the Court of Appeal. However, there is an exception to that general rule. There are instances whereby a person convicted of his own plea of guilty may appeal against the legality or extent of the custodial sentence imposed upon him. That is one such instance. On the other hand, he may as well appeal against a conviction that was founded on a plea of guilty considered to be equivocal. The case of Juma Tumbilija & Two Others versus Republic: [1998] TLR. 139 does fortify that

position. In that case of the court heled, inter alia, that: "According to S. 360 of the Criminal Procedure Act 1985, an appeal against conviction upon a plea of guilty can only be competent after determining that the plea of guilty was not unequivocal." Page 6 of 11

Having considered such legal positions, I find it desirable to examine closely what transpired in the District Trial Court as reflected on the record. On 04.06.2024, before Hon. Dennis G. Luwungo, SRM, the charge sheet preferred against the accused (appellant herein) was read over and explained to him and thereafter, he was asked to plead to the charges. Here below was his plea: 1st count: Your hon., it is true I did rape that girl on 16th May 2024. 2nd count: Your hon., it is true I also had sexual intercourse with the said girl against her order of nature on that very date. The court entered as a "plea of guilty to the charges." Thereafter, the public prosecutor read over and the accused (the appellant herein) the facts constituting the offences. The District Court Magistrate recorded the appellant plea to the facts as hereunder: "Your honour, it is true I raped the victim and also had sexual Page 7 of 11 intercourse against her order of nature on 16/5/2024 at about 15:00 hrs in the afternoon. That then I was arrested by three people and taken to the village office at Korongwe and then to Kabwe Police and later on to Namanyere Police Station. Your hon, at Namanyere, I was interviewed, and I did confess; then I was taken to the justice of peace, where I also confessed to committing these offences. Your hon, I do not know the name of the victim, but I found her playing along the road. I do not know even her parents." During narration of the facts constituting the two offences, the trial court admitted as exhibits, a cautioned statement of the appellant, a PF3 of the victim, and an Extra Judicial Statement. These were admitted and marked as exhibits P1, P2, and P3, respectively. The same were read to the accused after they had been admitted. The record does show Page 8 of 11 that, upon admission of the facts constituting the offences, the trial court proceeded to convict the appellant based on his own plea of guilty of the two offences. From the facts narrated to the appellant and his response thereto, the question that begs for an answer by this court is whether the present appellant was properly convicted in accordance with the dictates of the law. Put differently, can it be said that the plea of guilty was an unequivocal plea? For my part, I have no hesitation in answering those questions in the affirmative. The appellant was charged on two counts as stated herein above, namely rape and unnatural offence contrary to Section 130 (1) and (2) (e) and Section 131

- (1) and (3) and Section 154 (1) (a) and (2) of the Penal Code, Cap. 16 RE 2019, respectively. The pleaded guilty to the charges and admitted all facts constituting the two offences, having been read over to him. In my view, having pleaded guilty in respect of the offences he was facing and having admitted all material facts constituting the two offences, it was appropriate that the District Page 9 of 11 Resident Magistrate proceeded to convict him on his own plea of guilty. His plea cannot be said to be equivocal, as he seems to convince this court that it is. I am therefore satisfied that the appellant was properly convicted. In essence, the law is clear as regards conviction entered based on the plea of guilty. The provision of section 228 (2) of the CPA provides as follows: "If the accused person admits the truth of the charge, his admission shall be recorded as nearly as possible in the words he uses and the

magistrate shall convict him and pass sentence upon or make an order against him, unless there appears to be sufficient cause to the contrary.” [Underline is mine] The above provision reveals that before passing sentence against an accused person who has been found guilty on his own plea of guilty, the court must be satisfied that the accused plea of guilty is an unequivocal one. The trial court was so satisfied that the plea entered by the accused (appellant herein) was of that quality and I do subscribe to that. Page 10 of 11 With respect, therefore, I find no irregularity on the face of trial court proceedings to warrant the granting of the prayers of the appellant. I therefore refrain from interfering with the trial court's proceedings, conviction, and the sentence imposed on the appellant. In fine, the appeal by the appellant has no merit, and the same is dismissed. It is so ordered, DATED AT SUMBAWANGA ON THIS 11th DAY OF DECEMBER 2024 DEO JOHN NANGELA JUDGE Right of Appealing to the Court of Appeal is fully explained and guaranteed. DEO JOHN NANGELA JUDGE 11TH OF DECEMBER 2024 Page 11 of 11

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