

TANZANIA / JUDGMENT

Agness Alfred vs Republic

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA BUKOBA SUB-REGISTRY AT
BUKOKA CRIMINAL APPEAL NO. 17825 OF 2024 (Arising from Criminal Case 7799 of 2024
District Court of Misenyi) AGNES ALFREDY.... ..APPELLANT
VERSUS REPUBLIC..... RESPONDENT

JUDGMENT

29th August and 5th September, 2024 BANZI, J.: On the 3rd day of April, 2024, the appellant was convicted on her own plea of guilty by the District Court of Misenyi for the offence of grievous harm contrary to section 225 of the Penal Code [Cap.16 R.E. 2022] and was sentenced to four (4) years imprisonment. In addition, she was ordered to pay TZS 2,000,000.00 to the victim as compensation. The appellant is now before this court challenging her conviction for being; based on the plea of guilty which was imperfect, ambiguous and unfinished. She is also faulting her sentence for being severe. At the hearing of this appeal, the appellant appeared in person, unrepresented, whereas, Mr. Erick Mabagala, learned State Attorney represented the respondent, Republic. In her short submission, the appellant Page 1 of 8 urged this court to consider her grounds of appeal. She further challenged the sentence for being severe considering that, she was the first offender. In that regard, she prayed for her appeal to be allowed and be released from prison. On his side, Mr. Mabagala supported the appeal basing on the ground that, the appellants plea of guilty was equivocal. Relying on the case of Michael Adrian Chaki vs Republic (Criminal Appeal No. 399 of 2019)

[2021] TZCA 454 TanzLII, he submitted that, generally section 360 (1) of the Criminal Procedure Act [Cap. 20 R.E. 2022] (the CPA) restricts appeals arising from a plea of guilty unless such plea is equivocal in the sense that, the same is ambiguous, imperfect or unfinished. He added that, according to the case of Bahati Lafwile Ngole @ Furaha vs Republic (Criminal Appeal No. 160 of 2022) [2023] TZHC 17334 TanzLII, equivocal plea means an ambiguous or vague plea that is a plea which is not clear whether the accused person denies or admits the truth of the charge. He stressed that, in our case, the appellant admitted to have punished the victim because he found him raping her daughter. According to Mr. Mabagala, the appellant's plea was ambiguous because the appellant raised the defence on her plea by mentioning the reasons for punishing the victim. He added that, punishment entails a lot of things and might not include what has been Page 2 of 8 stated in the charge.

It was also his submission that, for accused person to be convicted on plea of guilty, the plea must be complete, unequivocal and unambiguous as it was stated in the case of Onesmo Alex Ngimba vs Republic (Criminal appeal No. 157 of 2019) [2022] TZCA 26 TanzLII. He concluded that, since the plea of the appellant was ambiguous, the trial court ought to have entered a plea of not guilty and continued with trial. He therefore prayed for this court to quash the conviction, set aside the sentence and remit case file to the trial court for it to enter plea of not guilty and proceed with trial. The appellant had no rejoinder. Having thoroughly considered the grounds of appeal and the submission of the learned State Attorney, the main issue for determination is whether the appellants plea was equivocal. It is prudent to underscore that, section 360 (1) of the CPA, restricts appeals where the accused person has been convicted on his own plea of guilty, save for the extent or legality of the sentence. However, under certain circumstances, an appeal may be entertained notwithstanding a plea of guilty. These exceptions were stated in the case of Laurence Mpinga vs Republic [1983] TLR-166 where it was held that: "an accused person who has been convicted by any court of an offence on his own plea of guilty may appeal against Page 3 of 8 the conviction to a higher court on any of the following grounds:

1. that, even taking into consideration the admitted facts, his plea was imperfect, ambiguous or unfinished and, for that reason, the lower court erred in law in treating it as a plea of guilty;
2. that he pleaded guilty as a result of mistake or misapprehension;
3. that the charge laid at his door disclosed no offence known to law; and
4. that upon the admitted facts he could not in law have been convicted of the offence charged." From the position of the law quoted above, it is apparent that, for a trial court to convict a person on his own plea of guilty, it must satisfy itself among other things that, that the accused's plea is perfect, unambiguous or complete admission of guilt to the offence he or she is charged with. In the matter at hand, the charge reveals that: "STATEMENT OF OFFENCE GRIEVOUS HARM; Contrary to Section 225 of the Penal Code [CAP. 16R.E. 2022] PARTICULARS OF OFFENCE AGNES D/O ALFREDY on IGF day of 2024 (Sic) at Ngando Village within Missenyi District in Kagera Region did Page 4 of 8 grievous harm to one ABRAHAM S/O STANFORD on his thighs, arms, penis by using Hot knife." The record of the trial court reveals that, on the first date when the charge was read over to the appellant, she replied as follows: "It is true your honour that I burnt him with a hot knife on his thigh, and not any other parts of his body." Thereafter, the trial magistrate entered a plea of not guilty and proceeded to issue other orders including setting the date for preliminary hearing. However, on 3rd April, 2024, when the appellant was reminded her allegations, she replied as follows: "It is true your honour I punished him (victim) because I found him raping my daughter." After that, the trial magistrate entered a plea of guilty and after recording the facts narrated by the prosecutor, he proceeded to convict the appellant. According to section 228 (1) of the CPA, the appellant was supposed to admit the truth of the charge. Notably, it is clear from the extracts that, the appellant did not admit the truth of the charge which is causing

grievous harm to the victim as alleged in the particulars of offence but rather, she admitted to punish the victim because she found him raping her daughter. Obviously, punishing someone is different from causing grievous harm. Apart from that, she did not admit to cause grievous harm Page 5 of 8 to the victim by burning him on the thighs, arms and penis by using hot knife which was the truth of the charge as indicated In the particulars. In the case of Jack Mahembega vs Republic (Criminal Appeal No. 369 of 2020)

[2023] TZCA 17821 TanzLII it was emphasised that: "According to the above provisions, it does not matter what the accused pleads or says in response to the charge. If he does not admit its truth, a plea of not guilty, must on all occasions, be entered, even if he was to keep quiet..." (Emphasis supplied). As rightly submitted by Mr. Mabagala, the plea of the appellant is ambiguous and thus, equivocal. Under such circumstances, the trial magistrate was supposed to enter a plea of not guilty and proceed with trial as directed under sections 228 (3) and 229 (1) of the CPA. Apart from that, the trial magistrate slipped into another error by disregarding the procedure on how to record pleas of guilty which was set out by the then Court of Appeal for East Africa in the case of Adan vs Republic [1973] EA 445 and fortified by the Court of Appeal of Tanzania in the case of Peter Kombe vs DPP (Criminal Appeal No. 12 of 2016) [2018] TZCA 506 TanzLII where it was stated as follows: Page 6 of 8

- (i) The charge and all the Ingredients of the offence should be explained to the accused in his language or in a language he understands. (ii) The accused's own words should be recorded and if they are an admission, a plea of guilty should be recorded; (iii) The prosecution should then immediately state the facts and the accused should be given an opportunity to dispute or explain the facts or to add any relevant facts. (iv) If the accused does not agree with the facts or raises any question of his guilt, his reply must be recorded and change of plea entered.
- (v) If there is no change of plea, a conviction should be recorded and a statement of the facts relevant to sentence together with the accused's reply should be recorded. (Emphasis added). In the instant case, the record reveals that, after the prosecutor completed to narrate the facts, the trial magistrate did not give the appellant an opportunity to dispute or admit the facts. Instead, he proceeded to convict the appellant without admission of facts from the appellant. That was indeed improper procedure which cannot be saved by section 388 (1) of the CPA. Page 7 of 8 From the foregoing reasons, I allow the appeal as the appellant's plea of guilty was invalid. Consequently, I nullify the trial court's proceedings, quash the conviction and set aside the sentence and compensation order. I remit the case file to the trial court for the appellant's fresh plea to be taken according to law, before another magistrate with competent jurisdiction. In the meantime, the appellant shall remain in custody until she is sent to the trial court. It is so ordered. I. K. BANZI JUDGE 05/09/2024 Delivered this 5th day of September, 2024 in the presence of Mr. Erick Mabagala, learned State Attorney for the Respondent, the appellant, Hon. Audax V. Kaizilege, Judge's Law Assistant and Ms. Mwashabani Bundala, RMA. Right of appeal fully explained. I. K. BANZI JUDGE 05/09/2024

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