

TANZANIA / JUDGMENT

Amosi Dania Umi v Republic DC Crim

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THE JUDICIARY OF TANZANIA IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA AT
KIGOMA DC. CRIMINAL APPEAL NO. 000024282 OF 2024 AMOSI DANIA UMI
COMPLAINANT / APPELLANT / APPLICANT VERSUS REPUBLIC
RESPONDENT / DEFENDANT

JUDGMENT

KAHYOZA, J The Appellant, Amos Dania Umi was arraigned before the District Court of Buhigwe for the offence of rape contrary to sections 130(1)(2)(e) and 131(1) of the Penal Code, CAP 16, R. E. 2022. When the charge was read over to him, he pleaded guilty to the charge. Consequently, the plea of guilty was entered by the court. The court also went ahead to read over to him the facts constituting the case, and he admitted that the facts were true and correct. The court then sentenced him to thirty years imprisonment on his own plea of guilty. In addition, he was also ordered to pay compensation to the victim in the sum of Tshs.3,000,000/-. Conviction and sentence appear to have not settled well with the Appellant. He is now appealing against both conviction and sentence. He has filed a petition of appeal containing five grounds. They are reproduced here below:

1. That, the trial Court Magistrate erred in law and fact by convicting and sentencing the appellant considering the own plea guilty of Appellant which was equivocal and ambiguous.
2. That, the trial Court magistrate erred in law and fact by convicting and sentencing the Appellant based on Appellant's own plea of guilty which was equivocal due to the fact that the Appellant was threatened by the police and forced to admit the charge he was charged before he brought to the court. That could be unjust to allow the guilty plea to stand due to the pleasure he experienced and according to principal which state that the defendant making his decision must be free from the pressure of the circumstance in which he is forced to make his choice.
3. That, the trial court magistrate erred in law and fact by convicting and sentencing the appellant for his own plea of guilty which was equivocal because the Appellant was not either given an opportunity to explain the circumstances and fact of the charge levied against him nor did he voluntarily plead guilty. See it at page 3 of the case proceeding copy attached. Page. 1 Hon... PROJESTUS KAHYOZA

4. That, the trial court grossly erred on point of law and facts for the whole proceedings of this case when it took into the consideration of Plea of guilty which was equivocal and violate the law and procedure staple to be adhered to when an accused person is called upon to plea as well explained by SPRY VP in ADDAN'S Case (SUPRA at page 466(. See it in Jesephant James VS Republic Criminal Appeal316 of 2010 CAT at Arusha, Jacky Mahembega VS Republic Criminal Appeal No 369 of 2020 CAT, Laurence Mpinga VS Republic (1983) TLR 166 and also Chamurungu VS SMZ (1988 LRC CR)) 26 at page 29).
5. That, the guilty of Appellant was not proved beyond the reasonable doubt as required by the law At the hearing, the Appellant was un represented. On the other hand, the Respondent Republic was represented by Ms. Antia Julius, learned State Attorney. The Appellant made no submissions to elaborate his grounds of appeal. He only urged the court to consider his grounds of appeal and then decide accordingly. On her part, Ms. Antia, learned state attorney did not support the appeal. She supported the conviction and sentence imposed upon the appellant by the trial court. In her submissions, she argued grounds 1,2,3 and 4 together; and addressed ground five separately. Addressing grounds 1,2,3 and 4, the learned state attorney submitted that the Appellant's plea was properly taken and according to law. She pointed out that the Appellant's response when the charge was read over to him clearly shows that he understood the charge he was facing as reflected at page three of the court's proceedings. It was her further submission that the Appellant admitted to have raped the victim, and that he mentioned the victim he raped by names. Ms. Antia further submitted that apart from pleading guilty, the Appellant also admitted all the facts as being true and correct. Even when the PF3 was tendered in evidence, the Appellant never objected to its admissibility. The learned state attorney also pointed out that during mitigation, the Appellant pleaded with the court for a lenient punishment and that he was regretting committing the offence. She concluded by saying that all these demonstrate that the Appellant knew the charge he was facing and the pleas was therefore not equivocal. To support her position, the learned state attorney cited the case of Machaba Makora Komasisige vs Republic, Criminal Appeal N0.303/2020, reported at Tanzlii. In this case the Court of Appeal considered a similar situation and held that the plea was properly taken. On the Appellant's complaint that he was threatened by police, she dismissed this complaint as being baseless and an afterthought. This is because the plea was taken before the court and not at police. She submitted further that before the court, the Appellant was free, and also that he never raised that issue before the court that he was threatened or was promised anything. On the fifth ground, she submitted that since the Appellant pleaded guilty, the prosecution had no duty to call witnesses. This is according to section 228(1,2) of the CPA. She wound up by praying that the appeal be dismissed and the decision of the trial court be upheld. In a short rejoinder, the Appellant reiterated to say that he did not plead guilty, but was compelled by the police officers. He thus insisted that the appeal be allowed. Page. 2 Hon... PROJESTUS KAHYOZA I have carefully considered the submissions by both sides. I also have had an opportunity of carefully looking at the grounds of appeal as well as the record of the trial court. I shall from that angle proceed to determine whether the appeal has merit or not. I

must say from the outset that looking at the record of the trial court, there is nothing suggesting that the Appellant's plea was equivocal. Probably the record should paint the picture by itself. At page three of the proceedings of the trial court, we have the following: - Court: Charge is read over and explained to the Accused person in Swahili language which he understands and he is asked to plead thereto. Accused: "Ni kweli nilimbaka Velada Jelas @ Philipo binti mwenye umri wa miaka 10" Court: Entered as a plea of guilty for the accused person. Public Prosecutor: Since the accused pleaded guilty, we pray to proceed with summary facts. After the facts were read over to the Appellant, this is what is he is recorded saying, at page five of the proceedings: - Accused: "I admit all facts as true and correct". Looking at the above excerpts, it is patently clear that there is nothing to suggest that the Appellant's plea was equivocal. What is portrayed by the proceedings is that the plea was taken properly, and in accordance with the law. As for the complaint that he was threatened at police, I entirely agree with the learned state attorney that this complaint is unfounded because he never raised it before the trial court where his plea was taken. I therefore agree with the learned state attorney that this is nothing but an after thought. The position of the law is clear. Section 360

- (1) of the CPA, clearly provides that: "An appeal shall not be allowed in the case of any accused person who has pleaded guilty and has been convicted on such a plea by a subordinate court except as to the extent or legality of the sentence". But again, in *Machaba Makoro Komasiiga vs Republic* (Criminal Appeal No. 303 of 2020) [2024] TZCA 438 (11 June 2024), reported at *Tanzlii*, the Court of Appeal addressed a similar situation and had this to say: - "...we are of a settled finding that, under the circumstances of this case, the appellant is not entitled to challenge the conviction which is based on his own plea of guilty. After the charge had been read and explained to him the appellant is on record to have admitted the charge by stating that "Nikwelinilimbaka mlalamikaji" (it is true I raped the complainant). Then the Court went ahead to say: - Page. 3 Hon... PROJESTUS KAHYOZA The appellant's plea was thus, unequivocal and it cannot be said that the same was imperfect, ambiguous, unfinished or that the appellant pleaded to the charge as a result of any mistake or misapprehension. Further, the appellant's complaint on ground 2 of the appeal that, he pleaded guilty to the charge as a result of being forced by the police is, as rightly argued by Mr. Temba, nothing but an afterthought. There is nothing on record suggesting that the appellant's own plea of guilty was procured as a result of a threat or promise from any person in authority in consideration of the appellant pleading guilty". In like manner, in this case there is nothing suggesting that the plea was equivocal. Equally, there is nothing on record suggesting that the Appellant was threatened by police. It is for these reasons that I find no merit in grounds 1,2,3 and 4 and I proceed to dismiss them. With regards to ground five, Ms. Antia submitted that the complaint in that ground is baseless because the Appellant pleaded guilty, and as such there was no need to summon witnesses to prove the prosecution's case. Once again, I agree with the learned state attorney that following the Appellant's own plea of guilty, the prosecution's duty to call witnesses was no longer there. Thus, this complaint is unfounded and an after thought. I find it devoid of merit. In the *Machaba Makoro Komasiiga* (supra), the

Court had this to say in relation to such a situation: - “Where an accused person admits the truth of the substance of the charge and he is convicted on his own unequivocal plea of guilty, the requirement to call witnesses or bring any other evidence in support of the charge does not arise and it cannot be complained in appeal that the prosecution did not call witnesses in support of its case”. In fine, and from the discussion above I find the appeal wanting in merit. There is nothing to fault as regards the conviction and sentence. I thus uphold the conviction and sentence meted out on the Appellant. The appeal is accordingly dismissed in its entirety. Dated at KIGOMA this 16th of December 2024 . P. R KAHYOZA JUDGE OF THE HIGH COURT Page. 4 Hon... PROJESTUS KAHYOZA

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