

TANZANIA / JUDGMENT

20170802 TZHC Mwanza

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...i,.. - ! ., -J~i- IN THE HIGH COURT OF TANZANIA IN THE DISTRICT REGISTRY ATMWANZA HIGH COURT CRIMINAL APPEAL No. 42 Of . 2017 . (Arising from Criminal Case No. 181 of 2016 at Sengerema District Court before M. O. Ndekobora R.M date 25h Jul½ 201}; HA.JI SAM WE LI. ■ .. II ■ .. ■■■■ .. II ■ tr I I . G ... II. ■ I' ■ ... II. ■ ■ II. ■ II .. APPELLANT versus THE REPUBLIC11 ■■■■ 11 ■ ■ . ■ ■ ■ ■ . ■ ■ ■■■■ a ■ ca ■■ . ma ■ a ■■ ■ s ■ ■ ■ ■ ■ a ■■ 11 ■■■■ 11RESPONDENT 1111 11 1111 1111 1111 11 11 JUDGMENT 10 3 rd July, & 2nd August, 2017 J. A. DE-MELLO, J; Before-sengere·ma· ·oistrict Court, the Appellant was charged with the offence of Rape contrary to section 130 (1) (2) and 131(1) of the Penal Code, Cap. 16 RE 2002.Record has it that he was limited in Swahili language and an interpretor/translator had to ~e summoned to transl_ate from Swahili to Sukuma language.He pleaded guilty to the charge and the same_ was accordingly entered. _The accused replied; "Ni kweli nilimbaka Regina d/ o Bulengo wa Tabaruka." He even admitted to the facts of the offence that were read over to him.It is Regina Bulenga, a thirte12n years :2-0 old girl that the Appellant had ~~rnfJ\rnledge with. Satisfied with evid_ence

- . ~\~U.> i<~w - /- /'. the Trial Court sentenced him to thirty years (30) imprisonment with twelve strokes as corporal punishment, six on the first day in jail, and the other six on the last day of his term. He is now resisting on both conviction and sentence, challenging the PLEA he took not to be understood and second, the s conviction based on unequivocal plea of guilty and thirdly, that the facts were not translated properly to him. Being a lay person and limited in law, the Appellant had nothing of value other than to pray for adoption of his grounds of Appeal having been prepared by the Prison officials. He only lamented to have been wrongly 11 convicted while insisting for his release. State Attorney Dorcas Akyoo for the Republic, sternly objected the Appeal while in one with the conviction and sentence that the Trial Court passed against the Appellant. She expounded on how section 228 (2) of Cap. 20 was invoked as the Magistrate explained all the rights on the Plea of Guilty unequivocal by nature that the Appellan~, the accused then had. Realizing his limitation in Swahili, the Magistrate went fu~her and summoned a translator to lead the Appellant accordi~gly ;m~ w~his local language, kisukuma: Counsel . ~ . -JQ- ,,-0 l j submitted the Appeal to be an 'Aftethought' praying for the Court to discard as it is dismissed. I ~ The crux of this Appeal· is centered solely on · whether the Appella·nt's Plea was unequivocal as stated under section 360 (1) of the Criminal Procedure Act Cap. 20 (supra) and which if certain, bars appeals from

convictions based on such admissions. It states:- "No Appeal shall be allowed in the case of any accused person who has pleaded guilty and has been convicted on such plea by a subordinate court except as to the extent or legality of the sentence". However, the above can in other circumstances notwithstanding, a Plea of Guilty as has been in several cases like of *laurence.Mpinga vs. The Republic* [1983] TLR 166 relying on the case of *Ramadhani Haima vs. Republic*, Criminal Appeal No. 213 of 2009 CAT (Unreported) highlighting the reasons for departure to the following;

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, the pleaded 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. . . Depending on circumstances of each case, one has to then peruse and ascertain how and what transpired before the Trial Court. Record on page 1 of the proceedings reflects; "Court: the charge read over and explained to the accused person who asked to plead on thereto: - accused is speaking sukuma language, the translator has called upon to translate him for a language he understands. 10 ---Translator: name: John Suluba Age: 59 years Religion; Christian Sworn and translates Accused reply" Ni kweli nilimbaka Regina Bulengo wa Tabaruka" Court: entered as a Plea of 'GUILTY' to the charge PP. I pray to proceed with facts of the case. \ . The facts were read to the accused. ~ i ~. i j ---1 -- 11 1 Court: Asked the accused as whether the facts are true and correct i j and whether he admit them all. Accused reply: Facts are true and, correct I admit them all. Accused signed PP-Signed ... " There is no magic that with the intervention of the translator from Swahili to Kisukuma, the Appellant was well versed and quite alert of the charge and its facts that, were translated to. Not even the PF3 no independent __witnesses:could_change-the.factthatthe-Appellant-willingly-and-without-force--~=:::: admitted to. It was all before the Court and quite safe and friendly. Reading through the admission it is obvious that he was alive to what he did against the girl child. In the case of *Hando Akonaay vs. R*, (1951) 18 EACA 307 held; "That the actual words used by the accused in pleading guilty to the charge should be well recorded". This is what the Trial. magistrate did. , -jla- r find no substance in this Appeal as I fully agree with Counsel Akyoo that it was one of those attempts by many while in prison to try their luck, and afterthought it The conviction and sentence of the Trial Court stands. I order. So ordered. _Judge 2 nd August, 2017

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