

TANZANIA / JUDGMENT

ruth alex vs republic

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IN THE COURT OF APPEAL OF TANZANIA AT ARUSHA (CORAM: RUTAKANGWA. J.A., KILEO, J.A., And MASS ATI, J.A.^ CRIMINAL APPEAL NO. 294 OF 2015
RUTHAALEX..... APPELLANT VERSUS THE
REPUBLIC..... RESPONDENT (Appeal from the decision of the High Court of Tanzania at Moshi) (Sumari, J.l Dated the 11th day of June, 2015 In DC Criminal Appeal No. 23 of 2014 JUDGMENT OF THE COURT 25th & 29th July, 2016. KILEO, J. A.: The District Court of Hai sitting at Hai convicted the appellant Rutha Alex on his own plea of guilty to rape contrary to sections 130 (1),

- (2) (e) and 131 of the Penal Code, Cap 16 R. E. 2006 . He lost his first appeal to the High Court and is before us on a second attempt to appeal. At the hearing of the appeal the appellant appeared in person and fended for himself. Apart from denying that Rutha Alex is not his name, (an aspect that was properly ignored by the learned first appellate judge) the appellant did not have much of substance to tell us except to ask us to adopt his grounds of appeal. The respondent Republic was represented by Ms. Mary Lucas learned State Attorney. She supported both conviction and sentence that was meted out arguing that from what appears on the record the appellant's plea was unequivocal. The matter before us is simple and need not detain us. There is only one issue which is whether the appellant's plea in the trial court was equivocal. The general premise where an accused has pleaded guilty is that no appeal will lie. Section 360 (1) of the Criminal Procedure Act which is the governing provision states: "360. No appeal on a plea of guilty
- (1) 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." There are situations however, where an appellate court may entertain an appeal against a conviction resulting from a plea of guilty. These situations were succinctly elaborated in Josephat James v. Republic - Criminal Appeal No. 316 of 2010 (unreported). Citing Rex v Forde (1923) KB 400 at 403, the Court in that case found that an appeal against a conviction on a plea of guilty may be entertained where the appellant did not appreciate the nature of the charge or did not intend to admit he was guilty of it. The Court also cited Ramadhani Haima v. Republic, Criminal Appeal No. 213 of 2009, (unreported) which listed

the following circumstances where an appeal against conviction arising out of a plea of guilty may be entertained:

- 1) The plea was imperfect, ambiguous or unfinished and, for that reason, the lower court erred in treating it as a plea of guilty;
 - 2) An appellant pleaded guilty as a result of a mistake or misapprehension;
 - 3) The charge levied against the appellant disclosed no offence known to law, and
 - 4) Upon the admitted facts, the appellant could not in law have been convicted of the offence charged. As we observed in Criminal Appeal No. 35 of 2012, - Boniface Aiden versus the Republic, the list is not exhaustive but each case will depend on its own circumstances. We observed further in the above case that; "the point is, before entering a conviction a trial court must ensure that an accused has fully understood and appreciated the charge that is laid against him and intends to plead guilty thereto." 3 Can we say, in the present case, that the appellant did not fully understand and appreciate the charge that was laid against him and therefore intended not to plead guilty thereto? Looking at the proceedings as they appear on the record we have not the slightest doubt in our minds that the appellant fully understood and appreciated the nature of the charge laid against him. His plea was unequivocal. The particulars of offence to which the appellant pleaded to be true contained all the essential elements of the charge of rape under section 130 (1), (2) (e) of the Penal Code. The particulars read: "PARTICULARS OF OFFENCE: That RUTHA S/O ALEX Charged on 5th November, 2013 at 17:00hrs at Koboko Kusini village within Siha District in Kilimanjaro Region, did unlawfully have carnal knowledge of one GLORY S/O EMMANUEL a girl of 3 years old." On 7/11/2013 when the appellant first appeared in court and the charge read over and explained to him the appellant replied as follows: "It is true." The case was adjourned for a week to 14/11/2013 as the facts were not then ready. What transpired on 14/11/2013 will bear us out on our conviction that the appellant's plea was unequivocal. The following, which we have seen fit to reproduce in full, is what took place: "Date 14/11/2013 Coram:D.J. Mpelempwa Pros: Roymax Accused:Present C/Clerk Malema Pros. The case is for the mention. Facts are ready. I pray to proceed. Court charge re-read over and explained to the accused person who is asked to plea thereto. Accused: it is true. Court entered plea of guilt D.J. Mpelempwa 14/ 11/13 Facts of the case
1. Name and personal particulars of the accused person is the same as read over into the charge sheet.
 2. Informer of this case is Jane D/o Kened Shedy who is the biological mother of the victim namely Glory Emmanuel a girl of three (3) years.

3. On 05/11/2013 at or about 17:00hrs at South Koboko within Siha District in Kilimanjaro region. Accused person at the docie, after he discovered the victim left by her other to their neighbor mam Ombeni, while she went to trim her hair to Manka. He took opportunity to go to mama Ombeni and find mama Ombeni went to fetch water and found the victim remained home with the very old woman. He seduce the old woman that he asked by the victim's mother took the victim to her mother.
4. He took the victim nearby their house hide himself into the back o f the building, he undress the victim trouser and under parities, he also undress himself and did lubricant his penis by his saliva and did lay down the victim and penetrate his penis to the vaginal hole o f the victim.
5. Due to the pain she was feeling. The innocent victim cries for the help. The accused person manage to penetrate his penis deep into the victim vaginal hole. Led to break the sting which separate the anus and vagina.
6. The good Samantan followed the cries and managed to seen her laid down by the accused person and the accused person was minding up dressing his clothes. He runs away. They case him after they arrest him they took him to police station with the victim.
7. The victim was bleeding from his vagina. The police issued PF3 to the victim and accused person interrogated and agree to rape the victim till he ejaculated
8. The police officers took the caution statement o f the accused person and agreed to rape the victim.
9. The child taken to Siha District hospital and found raped. Into the victim's vagina found with some sperms remains. Accused he was stitched seven times. Pros. I pray to tender PF3 o f the victim and caution statement o f the accused person. Accused: I agree with the Exhibits. Court: Caution statement o f Rutha S/o Alex received and marked as exhibit PI, PF3 o f the victim receive and marked as exhibit P2. D.J. Mpelempwa 14/ 11/13 Accused: I agree with the statement addued by the prosecutor. Court: accused person found guilty from his own plea with sober mind. Therefore this court convict the accused person forthwith. D.J. Mpelempwa 14/ 11/13 Pros. Don't have any previous criminal record against the accused person. But the law is very dear concerning the offences o f rapes. The court rested with the power to punish offenders. I pray before our court to punish him several according to the law. Your honour the victim is a child o f tenders age. She failed to defend herself to the accused person who is above thirty years and muscular. Only your court can wipe the tears o f the victim's family and the whole society which wailing for the victim. I don't bear into my mind for the prudent person like this accused person. When he rape the victim was at normal state o f mind since he seduce the old woman to took the victim and went and hid himself back o f the building and when the victim cried for the help he tried to dose the victim mouth this all shows that the accused person was within sober mind. 8 Accused person: I pray for your mercy I did it only once." For an offence of rape that is committed against a child who is below eighteen years, as was the case here, to be established it ought

only to be proved that the accused person had sexual intercourse with the child. Sexual intercourse happens where there is penetration, no matter how slight. In the present case the particulars along with the facts that were read which were admitted by the appellant as being true, concisely showed that rape was committed. Paragraphs 4 and 5 are so elaborate on how the appellant inserted his penis into the vagina of the 3 year old victim causing serious harm to her. The appellant admitted the facts as well as the exhibits which consisted of his own cautioned statement and the medical statement (the PF3). To cap it all, when the appellant was given an opportunity to address the court in mitigation he asked for mercy saying that he did it only once. Surely with all the above on record it cannot be said that the appellant did not appreciate the nature of the charge or did not intend to admit he was guilty of it. Ail said and done we see no reason to fault the decisions of the two courts below. The appeal is found to lack merit and for this reason we dismiss it entirely. Dated at Arusha this 26th day of July 2016 E. M. K. RUTAKANGWA JUSTICE OF APPEAL E. A. KILEO JUSTICE OF APPEAL S. A. MASSATI JUSTICE OF APPEAL I certify that this is a true copy of the original.

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