

TANZANIA / JUDGMENT

20180903 TZHC Mwanza2

COURT
TZHCDECIDED
3 September 2018

Source: media.tanzlii.org · Research copy typeset by Esheria. Not court-issued or certified.

IN THE HIGH COURT OF TANZANIA AT MWANZA 1 APPELLATI; JURISDICTION CRIMINAL
 APPEAL NO. 59 OF 2018 {Originating from Criminal case No. 341 of 2016 of the District Court of
 Chato District at Chato} SETI s/ o MODEST ~ APPELLANT I I THE
 REPUBLIC. ■ .. ■■ · I I ■:~ · ■ I 111 ■ ■ ■ .. 11 11 I ■■ .. RESPONDENT I

JUDGMENT

23/07/2018 & 03/09/2018 Gwae,J The appellant named above is appealing against the decision of Chato District Court at Chato ("trial court") where he stood charged with an offence termed "Rape" c/s 130 (1) (2) (b) and 131 (1) of the Penal Code ! Cap 16 Revised Edition, 2002. The appellant was convicted by the trial court on the basis of his plea of guilty and he was eventually sentenced to thirty (30) years imprisonment. In his petition of appeal, the appellant'- complained that; firstly; that the 1 ' plea was equivocal, imperfect and ~mbiguous, secondly; that, t h e ~ 1 ' . " prosecution did not state any fact and thirdly; that, the cautioned statement was unprocedurally produced as no leave of the court was sought and granted. At the hearing of this appeal, the appellant fended himself and he had nothing to add to his grounds of appeal contained in his petition of appeal. The respondent was represented by Mr. Karumuna, the learned senior state attorney who supported the appellant's appeal basing his arguments in two points, namely;

1. That, the trial Magistrate did not record the appellant's plea of guilty as the same is recorded in English this is pursuant to 5.128 of CPA.
2. That, facts of the case were not recorded therefore deemed not to have been read over to the appellant. Following the above observations by the learned senior state attorney, he sought an order of this court quashing the decision and the imposed sentence against the appellant be set aside and order of trial denovo. The record of the trial court reveals that the appellant was arraigned on 18u, October 2016 and when asked to plead thereto, he made the following ~ plea and I quote; Accused: its true 2 CT: Entered prayer (sic) of guilty Accused's statement, I found her in the mining area without consent, hence she given (sic) me sex affair in order not to arrest her hence I pray for lenience of the court I did not know that this is ! criminal offence. PP: I pray for conviction and sent~nce on his own plea and I pray to I tender exhibits collectively. CT: By virtue of section 228 of th~ CPA Cap 20 R. 2. 2002 I hereby convict the accused as charged ~nd tendered cautioned statement I I admitted as PEL ' sgd i Kato DRM i/c 18/10/21016 . Now, in determining ground 1, I am of ~he view that a plea of

guilty by an accused person must be clear, unequivocal and unambiguous in order to justify a trial magistrate or judge to properly enter pleas of guilty. The plea must be in the words spoken by an accused. The arraignment of accused persons to the charges is governed by section 228 of the Criminal Procedure Act, Cap 20 R. E, 2002 which is reproduced herein under I

- (1) The substance of the charge shall be stated to the accused person by the court, and he shall be asked whether he admits or denies the truth of the charge. 3
 - (2) 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. In *Reuben Makujaa* (1992) T.L.R 2, this court (Msumi J) stated among other things that: "Before accepting a plea of guilty by the accused the court must be satisfied that the accused's reply but a clear admission of guilty" The emphasis as to words spoken by an accused was also stressed by the Court of Appeal of Kenya at Nairobi in *Adan v. Republic* [1973] 1 EA 445, it was held among other things that; "The charge and all the essential ingredients of the offence should be explained to the accused in his language or in a language he understands; the accused's own words should be recorded and if they are an admission, a plea of guilty should be recorded. 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; In our present case, the appellant's reply was recorded "its true", this is grossly wrong as the appellant's own words were to be recorded. The ~ 4
- appellant who appeared before me during hearing of this appeal is illiterate • and not conversant with English at all. The appellant's reply ought therefore to be recorded in the language he understands and in words actually spoken by him. In the 2nd complaint, it is evident from the trial court record that the prosecution did not state the facts of the case immediately after the trial magistrate having entered plea of guilty against the appellant, instead the statement by the appellant was considered as facts of the case as depicted in the above quotation. Facts constituting the offence, to my considered opinion, must be recorded and read over to the accused person who shall thereafter be asked to either admit or deny the same. Presently, it is quite unprocedural to note that leave alone requirement of consistency of facts with offence, the trial magistrate is plainly observed to have not recorded the facts of the offence against the appellant (See *Samson Kayora and Leonard Msimba v. Republic* (1985) T.L.R 158). It also goes without saying that the 3rd ground of appeal is merited due to reason that the appellant's cautioned statement would not have been ~ 5', produced without reading and recording of the facts of the case by the
 - I prosecution and trial court respectively. Before concluding this judgment I think it is worthy noting that when a trial magistrate or judge once presiding over a case he or she is not supposed to indicate his administrative status in the judiciary except substantive status like Principle or senior magistrate and the like but not judge in-charge or Resident Magistrate or District Resident Magistrate in-charge as wrongly reflected in the trial, court

proceedings herein above quoted. In the end result, the appellant's appeal is found meritorious for the stated I reasons, however in the circumstances of the case and interest of justice, the matter shall be expeditiously tried denovo by a different magistrate with competent jurisdiction It is so ordered. I M~ Judge 03/09/2(!18 6 I.

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE [https://media.tanzlii.org/media/judgment/346254/
source_file/579b4980ac468e47/20180903_TZHC_Mwanza2.pdf](https://media.tanzlii.org/media/judgment/346254/source_file/579b4980ac468e47/20180903_TZHC_Mwanza2.pdf)

CASE PAGE <https://chat.esheria.ai/case-law/tanzania/seti-so-modest-v-the-republic-rape-tzhc-2018>

Prepared on 14 October 2026 · Esheria