

**IN THE COURT OF APPEAL OF TANZANIA
AT DODOMA**

(CORAM: MSOFFE, J.A., RUTAKANGWA, J.A., And BWANA, J.A.)

CRIMINAL APPEAL NO. 25 OF 2008

SAID MAMBOLEO SANDA APPELLANT

VERSUS

THE REPUBLIC RESPONDENT

(Appeal from the judgment of the High Court of Tanzania at Dodoma)

(Kwariko, J.)

dated the 14th day of December, 2007

in

Criminal Appeal No. 58 of 2007

JUDGMENT OF THE COURT

29 October & 2 November, 2009

BWANA, J.A.:

The appellant, Saidi Mamboleo Sanda, pleaded guilty to the offence of rape contrary to section 130 (1) (2) (e) of the Penal Code (the PC) as amended by sections 5 and 6 of the Sexual Offences Special Provisions Act No. 4 of 1998 (the SOSPA). He was convicted by the District Court of Mpwapwa and sentenced to a prison term of thirty (30) years. That sentence was however, enhanced by the first appellate court to include corporal punishment of twelve (12) strokes of the cane. He was as well ordered by the said first appellate court

to compensate the victim of the offence the sum of Shs. 500,000/= to be paid immediately.

Undaunted, he has preferred this second appeal. He was unrepresented while the respondent Republic was represented by Mr. Amon Kirumbi, learned State Attorney.

The facts of the case are simple and brief. It was the prosecution case that sometime in July 2006 the appellant did have sexual intercourse with one Kileni d/o Machaka, a girl of sixteen years of age, without her consent. He pleaded guilty to the offence. The usual procedure was then complied with that is, the facts of the case were read to him to which he stated: "The facts are true. I used to have sexual intercourse with her." He was then convicted on his own plea of guilty. In his mitigation he asked for leniency as he was married to two wives and had six children. The trial court imposed the above stated prison term – in addition to what the High Court enhanced subsequently.

The appellant has advanced a single ground in his Memorandum of Appeal. To paraphrase it, he stated that both courts

a *quo* erred in law by holding that the appellant's plea of guilty was unequivocal while it was equivocal. He stated before us that the said plea of guilty was equivocal because he had been "influenced" by the police to enter such a plea so that he would be pardoned by the court. He claimed that being a simple peasant from a village, he had no reason to disbelieve what the police had advised him. He was shocked to realize what came out of his plea of guilty.

Mr. Kirumbi opposed the appeal basically on the following reasons. **First**, that the record clearly shows that the appellant had freely admitted committing the offence. **Second**, that the sentence imposed is the mandatory minimum provided for under the SOSPA, thus in conformity with the provisions of section 360 (1) of the Criminal Procedure Act (the CPA), he cannot even appeal against its extent or legality. **Third**, that what the appellant told this Court was an afterthought. He had an opportunity to raise the same before the trial court and/or the first appellate court. He did not do so. Mr. Kirumbi, therefore, asked this Court to dismiss the appeal.

The law is settled as to the procedure to be adopted when an accused person pleads guilty to an offence with which he is charged.

Section 228 (2) of the CPA states:

"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 shall appear to be sufficient cause to the contrary."

In the instant case, the trial magistrate did comply with the above provision of the law. It is our considered view that going by the record of the court, there is no sufficient cause to the contrary. Since the appellant pleaded guilty to the offence and admitted the facts as read in court, there was no need for him to be afforded an opportunity to further defend his case by calling witnesses, be they for the prosecution or for the defence.

The appellant claims to have been misled by the police by inducing him to enter a plea of guilty. If that was the case, we see

no reason why he should not have withdrawn the plea of guilty before the trial court. If that were not the case, we fail to see why then he did not raise the issue as one of his grounds of appeal to the High Court.

In so far as the issue of sentence is concerned, the provisions of section 360 (1) of the CPA are elaborate. That section states –

“No appeal shall be allowed in the case of an 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**”.

(Emphasis supplied.)

From the above provision of the law, it is apparent that the appellant would be allowed to appeal only in respect of the extent and/or legality of sentence. However, in so far as this case is concerned, the appellant pleaded guilty to an offence falling under sections 130 (1) (2) (e) of the PC as amended by sections 5 and 6 of the SOSPA. Under those provisions, a girl under the age of 18 (as in the instant case) is incapable of consenting to an act of sexual intercourse.

A man who commits such an offence faces a mandatory minimum sentence of thirty years imprisonment with corporal punishment and with a fine. In addition, such a convict has to pay compensation to the victim of an amount to be determined by the court. These requirements of the law were complied with. The sentence imposed is therefore in conformity with the law. In conclusion, we do not hesitate to observe that this appeal lacks merit. In our further view, this is the sort of appeal which could have easily been rejected summarily, as provided under section 4 of the Appellate Jurisdiction Act, 1979 as amended by section 2 (4) of Act No. 17 of 1993 which states –

“The Court may for reasons specified in this Act, the rules or any other law for the time being in force providing for appeals to the Court, summarily reject any appeal”.

We therefore dismiss the appeal in its entirety.

DATED at DODOMA this 2nd day of November, 2009.

J. H. MSOFFE
JUSTICE OF APPEAL

E.M.K. RUTAKANGWA
JUSTICE OF APPEAL

S. J. BWANA
JUSTICE OF APPEAL

I certify that this is a true copy of the original.

(Z. A. MARUMA)
DEPUTY REGISTRAR