

**IN THE COURT OF APPEAL OF ZAMBIA: APPEAL NO 12/2019
HOLDEN AT KABWE
(Criminal Jurisdiction)**

**IAN HAMALAMBO
V
THE PEOPLE**



**APPELLANT
RESPONDENT**

**CORAM: MAKUNGU, MULONGOTI AND SIAVWAPA JJA
On 21st May 2019**

FOR THE APPELLANT: MR. MUZENGA, DEPUTY DIRECTOR,
LEGAL AID BOARD

FOR THE RESPONDENT: MRS CHITUNDU, DEPUTY CHIEF STATE
ADVOCATE

J U D G M E N T

SIAVWAPA, JA; delivered the Judgment of the Court

Case referred to

Gideon Hammond Millard v The People (1998) S. J. 34 (SC)

The Appellant was convicted of the offence of defilement on his own plea of guilty and admission of facts. He was subsequently sentenced to thirty years imprisonment with hard labour by the High Court. Dissatisfied with that outcome, he appealed against both conviction and sentence. The basis of the grievance upon which the appeal is founded is the lower court's refusal to grant

him an application to withdraw the plea of guilty on account that he had not fully appreciated the implications of a plea of guilty due to a hearing impairment.

When the matter came up before us for consideration of the appeal, we observed that although the Appellant had pleaded guilty to the offence of defilement and admitted the facts to be correct as read out, the statement of facts did not disclose the offence of defilement. This is because the facts did not state that the prosecutrix was a child below the age of 16 years.

It is well established that for a plea of guilty to be unequivocal, the charge must be clearly explained to the accused who must, not only plead guilty, but also admit the facts as correct. The facts should encompass all the essential ingredients of the offence as set out in the particulars of the offence.

It follows therefore, that if the statement of facts admitted as correct does not contain an essential element of the offence, the plea stands equivocal and a plea of not guilty ought to be recorded. At this stage however, the prosecution is at liberty to apply to amend the statement of facts to include the missing element and proceed accordingly.

In the case of Gideon Hammond Millard v The People¹, the Supreme Court of Zambia had occasion to consider whether or not the facts admitted as correct disclosed the offence. This is in a case of

trafficking in psychotropic substances where the High Court had upheld the conviction by the Subordinate Court on a plea of guilty.

The convict, dissatisfied with the outcome, appealed to the Supreme Court arguing, inter alia, that the quantity of the drugs alone was not sufficient proof of trafficking as 50 grams came within the authorised levels for consumption and that there was no ingredient of aggravation disclosed in the facts.

The Supreme Court, in dismissing that ground of appeal stated that the appellant was represented by counsel at all times and as such counsel was well placed to raise any issues of dissatisfaction on the plea. At page 39 of the judgment, the Court stated as follows;

“The facts admitted as correct fully disclosed the commission of the offences”

In the case before us, the statement of facts which the Appellant admitted as correct, does not state that the prosecutrix was below the age of sixteen. It simply states that the prosecutrix was a female juvenile. This is not sufficient as the age of the prosecutrix in a case of defilement, is a key ingredient, which if not unequivocally admitted, renders the plea of guilty equivocal.

Further to that, we note from the record of proceedings in the Subordinate Court that at the time of taking the plea, the Appellant was unrepresented and therefore, unlikely to have fully understood and grasped the technicalities of a plea of guilty without the aid of the court. The record also shows at page 4 that after the statement

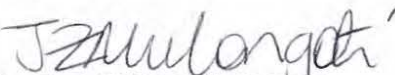
of facts was dictated to the court, the Appellant, when asked by the court, responded as follows;

“I understand the facts, they are true and correct. I have no variation to make”

Clearly, from the above response, the Appellant did not appreciate the variance between the particulars of the offence and the statement of facts in so far as the aspect of the age of the girl was concerned.

It was therefore, erroneous for the Court below to have convicted the Appellant on account of a plea of guilty and admission of facts under the circumstances. We accordingly quash the conviction and set aside the sentence and instead order a retrial before another court of competent jurisdiction.


C.K. MAKUNGU
COURT OF APPEAL JUDGE


J. Z. MULONGOTI
COURT OF APPEAL JUDGE


M. J. SIAVWAPA
COURT OF APPEAL JUDGE