IN THE COURT OF APPEAL OF TANZANIA

AT MWANZA

(CORAM: MSOFFE, J.A., KIMARO, J.A., And JUMA, J.A.)

CRIMINAL APPEAL NO. 288 OF 2012

ABALAMA VEDASTO .....APPELLANT

VERSUS

THE REPUBLIC .....RESPONDENT

(Appeal from the decision of the High Court

of Tanzania at Bukoba)

(Mjemmas, J.)

dated 30th day of July, 2012
in
Criminal Appeal No. 13 of 2011

JUDGMENT OF THE COURT

2nd & 5th August, 2013

MSOFFE, J.A.:

This short appeal arises from the decision of the High Court (Mjemmas, J.) sitting at Bukoba affirming the decision of the District Court of Ngara (Paul, DM.) that the appellant's plea of guilty to the offence of armed robbery was unequivocal. Following the plea he was convicted and sentenced to the statutory thirty years term of imprisonment and corporal punishment of twelve strokes of the cane. The appellant maintains that the plea was equivocal. This is the essence of his complaint in the

memorandum of appeal and, indeed, in his oral submissions before us. Of course, in the memorandum of appeal he has canvassed another ground that the trial was unfair because he was not availed the services of an interpreter. He is a Hutu (Mnyarwanda) and he is not conversant with Swahili, so he alleges.

The High Court properly directed itself to the law regarding a case of this nature. In the process, it referred to the often cited and celebrated case of **Lawrence Mpinga v. Republic** (1983) TLR 166 that:-

> (i) *An appeal against a conviction based on an unequivocal plea of guilty generally cannot be sustained, although an appeal against sentence may stand;*
>
> *(ii) an accused person who has been convicted by any court of an offence "on his own plea of guilty" may appeal against the conviction to a higher court on any of the following grounds;*
>
> *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 he pleaded guilty as a 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.*

We have carefully studied the record before us. The charge was read over and explained to the appellant to which he pleaded guilty. The facts were presented in sufficient detail. The facts clearly established the ingredients of the offence in question. Thereafter, he admitted the said facts. Consequently he was convicted as charged. As if that was not enough, there is nothing in his antecedents to indicate that probably up to that time he was changing his plea. Surely, on the basis of the case as presented, there is nothing to fault the courts below.

As already stated, the appellant has raised a complaint to the effect that he was not accorded a fair trial because his proficiency and fluency in Swahili was not good therefore, he ought to have been offered the services of an interpreter. In the first appeal, he raised this same point. The High Court dismissed it as an afterthought. We too share the same view. The complaint is not borne out by the record. Since this is a court of record

we are bound by the record before us. The record is clear that there has never been any complaint to the above effect at any stage of the proceedings.

When all is said and done, there is no merit in this appeal. We hereby dismiss it.

DATED at MWANZA this 3rd day of August 2013.

J.H. MSOFFE
JUSTICE OF APPEAL

N.P. KIMARO
JUSTICE OF APPEAL

I.H. JUMA
JUSTICE OF APPEAL

I Certify that this is a true copy of the Original.

P.W. BAMPIKYA
SENIOR DEPUTY REGISTRAR
COURT OF APPEAL