IN THE COURT OF APPEAL OF TANZANIA
AT MBEYA

(CORUM: KIMARO, J.A., MUGASHA, J.A., And MZIRAY, J.A.)

CRIMINAL APPEAL NO. 73 OF 2015

MADUHU KIUMBI.....APPELLANT

VERSUS

THE REPUBLIC.....RESPONDENT

(Appeal from the judgment of the High Court of Tanzania at Sumbawanga)
(Sambo, J.)

dated 29th October, 2013
in
Criminal Appeal No. 26 of 2013

.....

JUDGMENT OF THE COURT

8th & 12th April, 2016

KIMARO, J.A.:-

The appellant was convicted for two offences of armed robbery contrary to section 287(A) of the Penal Code [Cap. 16 R.E. 2002] after pleading guilty to the offences. In the first count of armed robbery the appellant was alleged to have on 12th February 2013 at about 00.30 hours in company of two other persons who were jointly charged with him, at Kasekese village within Mpanda District stolen cash T. shillings 1,026,000/= from Mohamed Hamis. Immediately before the stealing they beat him with sticks in order to retain the money stolen. In the second count the

appellant and the others were alleged to have stolen cash T. shillings 265,000/= and two cellular phones make Tg of Chinese valued at T shillings 90,000/= the property of Justin Mbalamwezi. The total value of the property stolen was T. shillings 355,000/=. Immediately before the stealing, the victim was wounded by sticks in order to allow the appellant and the other culprits to retain the stolen property.

When the charges were read over to the appellant his plea was as follows:

Accused plea in respect of the 1st count:

> *"It is true I robbed the victim but I did with another person not these accused."*

Accused plea in respect of the second count:

> *"It is true I robbed the victim but the second and third accused were not with me. I robbed them with different person who is not yet arrested."*

After the facts giving a detailed account on how the offences were committed, the appellant said:

> *"All read to me true but I committed the offence*

with a different man who has not yet been arrested

not these two innocent."

The facts regarding the offences as narrated by the prosecution to the appellant of which he admitted to be true were; on the date the offence were committed, that was on 12/12/2013 at 0.30 hours, the appellant and other persons kidnapped one Mwanvita Bakari. They forced her to take them to the house of Mohamed Hamis. The appellant had a gun made of wood and a torch. At the house of Mohamed Hamis the appellant and the others he was with, broke the door, entered into the house and ordered him to give them money. After wounding him, the victim decided to give them money. After that incident Mwavita was ordered to take the appellant to the house of Justine Mwambelezi. They also broke the door, attacked the victim and managed to take from him money and two mobile phones. Mwavita was also ordered to take the appellant to one Mkuya. At Mkuya's residence he raised an alarm. The appellant and his colleagues ran away. The rest of the facts were concerned with the arrest of the appellant and his acquaintance with Mwavita. Mwanvita knew well the appellant before as he used to see him drinking at the third accused person the appellant was charged with. When the people gathered at the house of Mkuya,

Mwavita mentioned the appellant as being among the persons who committed the robberies. His house was searched on the same day and he was found hiding himself in the bedroom of his children.

Upon admission of the facts the appellant was found guilty on his own plea and was convicted and sentenced to thirty years imprisonment for each count and the sentences were ordered to run concurrently.

His appeal to the High Court was dismissed on the ground that the plea of the appellant was unequivocal and under section 360 of the Criminal Procedure Act, [CAP 20 R.E.2002] an appeal for an accused person who pleads guilty is only allowed in respect of the sentence that was imposed on the appellant. The learned judge on first appeal held that the sentence that was imposed on the appellant was the minimum prescribed by the law.

The appellant is still aggrieved. He filed a memorandum of appeal containing five grounds of appeal.

In the first ground the appellant laments that his plea was not unequivocal. The second ground is that the ingredients of the offence were not established by the facts. The third ground of appeal was that the

exhibits were not brought before the trial court. The appellant also said that he did not know Kiswahili and so he did not understand the repercussion of pleading guilty to the charge.

At the hearing of the appeal the appellant appeared in person. He had no counsel to represent him. Ms. Rhoda Ngole, learned State Attorney represented the respondent/Republic.

Before the appeal was heard, the learned State Attorney raised a preliminary objection challenging the propriety of the notice of appeal that was filed by the appellant. The problem with the notice of appeal was that the title of the judgment the appellant was appealing against indicated that the learned judge of the High Court sat at Sumbawanga while in actual fact he sat at Mpanda. We were of a firm view that the preliminary objection was uncalled for because the failure by the learned judge on first appeal to indicate in the title of the judgment that he heard the appeal at Sumbawanga, instead of at Mpanda, did not make the notice of appeal to be defective. We are fortified in that holding because Mpanda is part of the High Court of Sumbawanga. However, we emphasize the importance of the trial judges indicating in their decisions, the precise place where the sitting of the High Court takes place.

Regarding arguing the grounds of appeal, the appellant felt safer for him to have the learned State Attorney respond to his grounds of appeal first before he responded to them.

The learned State Attorney supported the conviction and the sentence. She said the plea of the appellant to which he pleaded guilty was unequivocal. An appeal is allowed for such plea only on the sentence that was imposed. Since the sentence that was imposed was the minimum prescribed for such offence by the law, said the learned State Attorney, the appeal was properly dismissed by the learned judge on first appeal. That was in respect of the first ground of appeal. As regard the rest of the grounds of appeal, the learned State Attorney said they are new grounds and case law does not allow the Court to entertain new grounds of appeal not raised in the first appeal. She cited the cases of **Msafiri Hassan Masimba V Republic** Criminal Appeal No. 375 of 2013 (unreported) and that of **Hassan Bundala @ Swaga V Republic** Criminal appeal No. 153 of 2005 (unreported) to support her submission. She prayed that the appeal be dismissed.

The appellant in reply insisted that the plea was not unequivocal. He said he was lured by a policeman that if he pleaded guilty to the charge, he

would be set free. He also said that at the time the charge was read over to him he did not know Kiswahili. The Court in an endeavor to find out whether the appellant made it known to the trial magistrate what had befallen on him before he pleaded guilty to the charge the appellant replied in the negative. When asked whether he informed the trial court that he did not know Kiswahili, again he replied in the negative.

The issue before the Court is whether the appeal by the appellant has merit. This takes the Court to the first ground of appeal. That is whether the plea by the appellant was an unequivocal plea. According to BLACK'S LAW DICTIONARY EIGHTH EDITION BRYAN A. GARNER EDITOR IN CHIEF at page 1563 unequivocal means unambiguous, clear, free from uncertainity.

The charge sheet is clear on the offences the appellant was charged with. All ingredients are clearly brought out. In terms of section 287A of the Penal Code, the offence of armed robbery is committed whenever two or more persons use any weapon for purposes of committing theft. The facts were clear that the appellant and his colleagues attacked the victims before stealing the properties from them. The Court in the cases of **Sostenes John V Republic** Criminal Appeal No. 184 of 2014, and **Mkiwa**

Nassoro Ramadhani V Republic Criminal Appeal No. 187 of 2013 both unreported, dismissed the appeals by the appellants after being satisfied that the appellant understood the charge and the facts clearly showed the ingredients of the offence. In the case of **Mkiwa Nassoro Ramdhani V R** (supra) the Court held that:

> *"We do not hesitate to say that the facts reproduced above disclosed the ingredients of the charged offence. As will be recalled, the appellant and his colleague who braved justice in that he was not arrested, assaulted the complainant with sticks and managed to rob his bicycle. See the case of* ***Muraji Seif V Republic*** *Criminal Appeal No. 213 of 2005, CAT, Tanga Registry (unreported). Since the facts are clear they used sticks in accomplishing the robbery; also he did this in the company of that other person who was not arrested, that constituted the offence of armed*

robbery under section 287A of the said Act. That justifies our conclusion that the facts disclosed the ingredients of the charged offence."

The same situation applies in this appeal. The charges were unambiguous. The appellant understood them. He pleaded guilty to them. The facts were clear on the ingredients of the offence. He agreed that they were correct. See also the cases of **Lawrence Mpinga V Republic** [1983] T.L.R. 166 and **Josephat James V Republic** Criminal Appeal No. 316 of 2010 Unreported.

From the record of appeal there is no reflection of any injustice having been occasioned to the appellant. For this reason, the learned judge on first appeal was right to dismiss the appellant's appeal because there was no irregularity in the plea taking and the sentence that was imposed was lawful. In the case of **Mkiwa Nassoro Ramadhani V R** (supra) the Court held that:

"Appeals which result from a plea of guilty are governed by section 360 of the Criminal Procedure Act. Sub-section (1) to that section bars appeals of such nature except as

to the extent of legality of the sentence."

Regarding the other grounds of appeal raised by the appellant we see no need for discussing about them. Apart from the fact that they are new grounds and the Court has made it clear that it will not entertain such new grounds, the first ground of appeal sufficiently disposes of the appeal. As there was no illegality in the sentence that was imposed on the offences the appellant was charged with, the appeal before us has no merit. It is dismissed in its entirety.

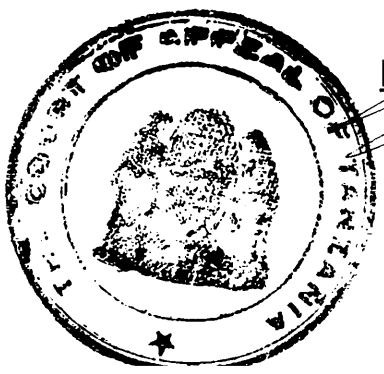
DATED at MBEYA this 11th day of April 2016.

N. P. KIMARO
JUSTICE OF APPEAL

S. E. A. MUGASHA
JUSTICE OF APPEAL

R. E. S. MZIRAY
JUSTICE OF APPEAL

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



E. Y. Mkwizu
DEPUTY REGISTRAR
COURT OF APPEAL