IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM

(CORAM: LUANDA, J.A., MZIRAY, J.A., AND MWAMBEGELE, J.A.)

CRIMINAL APPEAL NO. 207 OF 2008

ZAWADI MAHWATA ..... APPELLANT

VERSUS

THE REPUBLIC ..... RESPONDENT

(Appeal from the decision of the High Court of Tanzania at Dar es Salaam)

(Makaramba, J.)

dated the 28th day of May, 2008
in
Criminal Appeal No. 50 of 2006

JUDGMENT OF THE COURT

31st October & 7th November, 2017

MWAMBEGELE, J.A.:

Zawadi Mawata, the appellant herein, alongside two others – Ally Marcus @ Mbuzi and Julius Peter @ Babu – was arraigned in the District Court of Morogoro upon the offence of armed robbery c/ss 285 and 286 of the Penal Code, Cap. 16 of the Revised Edition, 2002. On his own plea of guilty, the appellant was convicted of that offence with which he was charged and sentenced to serve a forty-year jail term. The other two accused persons who are not party to this appeal pleaded not guilty

and trial against them proceeded, at the end of which the second accused person was acquitted and the third accused person was convicted and sentenced to thirty years imprisonment.

The appellant appealed to the High Court of Tanzania where Makaramba, J. dismissed the appeal against conviction but reduced the sentence to one of thirty years in jail. Still aggrieved, the appellant has lodged the present appeal to this Court, complaining against both conviction and sentence, on four grounds of grievance; viz:

1. That, the 1st Appellate Court erred in law to uphold the appellant's plea of guilty without taking into account that the trial court never explained an individual or every ingredient of the alleged offence to the appellant and/or without satisfying itself that the appellant had fully understood the charge as demanded by law.

2. That, the 1st Appellate Court erred in law by upholding the finding of the trial court in the case where the appellant pleaded guilty as a result of mistake or mis-apprehension.

3. That the 1st Appellate Court erred in law to uphold the finding of the trial court in the case where the conviction was not entered.

4. That the 1st Appellate Court erred in law and fact in upholding the finding of the trial court in the case where all exhibits P1, P2, P3 and P4 were unprocedural tendered by a prosecutor who was not a witness and who could not be validly examined or cross-examined by the appellant.

The appeal was argued before us on 31.10.2017 during which the appellant appeared in person; unrepresented. Ms. Monica Mbogo, learned Principal State Attorney and Ms. Neema Mbwana, learned State Attorney, joined forced to represent the respondent Republic.

Fending for himself, the appellant repeated his grievances he raised in the first appellate court; that he did not plead guilty to the charges levelled against him. That what he meant to say at the trial when pleading to the charges was that he admitted he was charged with the offence but that he did not mean to plead that he committed the offence with which he was charged. He stated he was an illiterate

lay person who could not understand what was going at the trial. He therefore pleaded with the Court to have mercy on him and set him free. With leave, he supplied the Court with our unreported decisions of **Safari Deemay v. R.**, Criminal Appeal No. 369 of 2011 and **Frank Massawe v. R.**, Criminal Appeal No. 302 of 2012 to buttress his arguments on the grounds of appeal.

On the part of the respondent Republic, Ms. Mbogo did not support the appellant's appeal. She stated that the record of the appeal speaks it all that when the charge was read over and explained to the appellant, he readily pleaded that it was true that he robbed the complainant while armed. Ms. Mbogo went on to submit that when the facts of the case were narrated to him, he admitted them as being correct. The learned Principal State Attorney added that all the exhibits were tendered and admitted in court without any objection from the appellant. To Ms. Mbogo, what transpired in court on the plea-taking day amounted to nothing but an unequivocal plea of guilty.

When given time to rejoin, the appellant reiterated his prayer for mercy as he could not read and write and therefore a layperson at law

which made him not understand what was going on in court on the material day.

We have dispassionately gone through the record of appeal and carefully considered the arguments of the parties at the hearing. We should now be in the position to confront the grounds of grievance in the memorandum of appeal. We haste the remark at the outset that, ordinarily, by virtue of section 360 (1) of the Criminal Procedure Act, Cap. 20 of the Revised Edition, 2002 (henceforth "the CPA"), except as to the extent or legality of the sentence, no appeal is legally permitted on a plea of guilty. There are circumstances, however, under which an appeal on a plea of guilty against conviction can be legally entertained. Those circumstances were articulated by the High Court of Tanzania (Samatta, J. – as he then was) in **Laurence Mpinga v. Republic** [1983] TLR 166. It is elementary that the decision, being one of the High Court, does not bind us. However, we are of the firm view that the decision depicts the correct position of the law. And, as we stated in **Baraka Lazaro v. R.**, Criminal Appeal No. 24 of 2016 (unreported), the **Laurence Mpinga** case was approved by this Court in the cases of **Josephat James v. R.**, Criminal Appeal No. 316 of 2010 and

Ramadhani Haima v. R., Criminal Appeal No. 213 of 2009 (both unreported), among others.

In **Laurence Mpinga**, it was categorically observed:

> *"... an accused person who has been convicted by any court of an offence 'on his own plea of guilty' may in certain circumstances appeal against the conviction to a higher court. Such an accused person may challenge the conviction 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 gone through the proceedings of the case, more especially the ones of 27.06.2003 appearing at pages 3 through to 10 of the record of appeal. We wish to remark at this juncture that, as was stated by the High Court by Mroso, J. (as he then was) in **Keneth Manda v. R.** [1993] TLR 107:

"An accused person can only be convicted on his own plea of guilty if his plea is unequivocal. That is, where it is ascertained that he has accepted as correct facts which constitute all the ingredients of the offence".

We take the trouble to dispassionately revisit the proceedings and see what transpired in the District Court when the appellant's plea was taken. To justify our finding (infra), we find it apt to reproduce what

transpired on the material day; that is, on 27.06.2003. When the charge was read over and explained to the appellant (and fellow accused persons) in the language he understood, he is recorded in response thereof as saying:

> *"Yes, your honour, it is true. I committed the offence charged. I robbed the complainant while armed."*

From the appellant's response as shown above, the trial court entered a plea of guilty to the charge. It then asked the prosecution to narrate the facts. The prosecution narrated the facts constituting the ingredients of the offence in a very elaborate manner running through two typed pages. Exhibits were tendered in the process. To the tendering of his cautioned statement, the appellant had no objection; he replied:

> *"I have no objection, I duly committed the offence."*

The appellant had a similar response to other exhibits; viz, the certificate of search, the bicycle spares in three boxes and the complainant's wallet containing several receipts of the complaint.

And, to clinch it all, to above facts, the appellant had this reply:

> *"All the facts narrated by the public prosecutor before this court are true."*

The District Court then proceeded to convict and sentence the appellant to forty years in jail plus twelve strokes of the cane.

Having objectively gone through the above record of appeal respecting what transpired in court when the appellant pleaded to the charges levelled against him, we are satisfied that none of the circumstances addressed in **Laurence Mpinga** has been disclosed in the present case. We are therefore of the firm view that the plea of the appellant was but unequivocal and therefore, under the dictates of section 360 (1) of the CPA, he had no legal justification to appeal against conviction to the High Court. With that finding, it follows that the High Court was justified to reject it; that is, the appeal against conviction.

For the avoidance of doubt, we have read the **Deemay** and **Massawe** cases supplied to us by the appellant. We are certain in our minds that the two cases are distinguishable from the case at hand. In **Deemay**, the appellant in that appeal was convicted on an alleged plea of guilty by pleading: "it is true". Relying on **Khalid Athumani v. R.**, and **Aidan v. R.** [1973] EA 445, the Court observed that "it is true" was not enough by itself to amount to an unequivocal plea. Likewise, in **Massawe**, the appellant therein was convicted after a full trial but during the trial, the public prosecutor tendered an exhibit; a gun, which was admitted in evidence. The Court held that it was not appropriate for the public prosecutor, who was not a witness and therefore could not be cross-examined, to tender the exhibit. It would be appreciated that in the present case, what transpired in those two cases is quite different.

As for the sentence, we subscribe to the view of the High Court that the appellant, being a first offender, there was no justification for the trial court to impose the sentence above the legal minimum sentence of thirty year in prison. The principles on sentencing expounded by the High Court, in our view, depicts the true and correct

position of the law in this jurisdiction. The sentence of thirty years imposed by the High Court in lieu of the one of forty years meted out to the appellant by the District Court, was quite appropriate in our view.

With the foregoing said, this appeal is devoid of merit. We dismiss it in its entirety.

Order accordingly.

DATED at **DAR ES SALAAM** this 3rd day of November, 2017.

B. M. LUANDA
JUSTICE OF APPEAL

R. E. S. MZIRAY
JUSTICE OF APPEAL

J. C. M. MWAMBEGELE
JUSTICE OF APPEAL

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

P. W. BAMPIKYA
SENIOR DEPUTY REGISTRAR
COURT OF APPEAL