

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

(CORAM: MUSSA, J.A., LILA, J.A. And MWAMBEGELE, J.A.)

CRIMINAL APPEAL NO. 286 OF 2016

**NJILE SAMWEL @ JOHN APPELLANT
VERSUS**

THE REPUBLIC RESPONDENT

(Appeal from the Judgment of the High Court of Tanzania at Shinyanga)

(Ruhangisa, J.)

dated the 3rd day of June, 2016

in

DC Criminal Appeal No. 12 of 2015

JUDGMENT OF THE COURT

28th August & 5th September, 2018

MUSSA, J.A.:

In the District Court of Bariadi, the appellant was arraigned and convicted for unlawful possession of ammunitions, contrary to the provisions of the Arms and ammunitions Act, Chapter 223 of the Revised Edition 2002 of the laws. The particulars on the charge sheet were that on the 10th day of January 2015, at Yoma area, within Bariadi District, the appellant was found in possession of 271 rounds of ammunition without a permit.

When the charge was read over and explained, the appellant gave the following response:-

"It is true that I was found in unlawfully possession of 272 ammunition of SMG/SAR without any permit."

Incidentally, the presiding officer did not record whether such was a plea of guilty or not but, immediately thereafter, this is what transpired in court:-

"Pros: I pray to read the case facts to the accused."

Preliminary facts.

- 1. It is true I am Njile, and I am 46 yrs*
- 2. It is true I live at Lyalu in bariadi District*
- 3. It is true I am also peasant*
- 4. It is true that I was found in unlawful possession of 272 ammunition of SMG/SAR, seven magazine and one back stroke*
- 5. It is true that on 10/1/2015 at 17.17 hrs before D.22 S/D/SGT took my caution statement where a pleaded guilty.*
- 6. It is true I pleaded guilty before judicial officer on 12/1/2015.*

7. It is true I have been brought today.

Memorandum of Agreed Facts:

The accused have agreed to both fact read to him by the prosecution before this court.

Accused: signed

Prosecutor: signed

*Signed
OGUNDA, R.A. R/M
21/1/2015*

Pros:

I pray for court conviction (sic) and pray to tender exhibit such as 272 ammunition of SMG/SAR, seven (7) magazine, one Backstock, search order No. 0381005, dated 10/1/2015. Caution statement of accused dated 10/1/2015, Extra Judicial statement of accused person dated 12/1/2015.

Court:

The accused is hereby convicted on his own plea to the charge of unlawfully (sic) possession of ammunitions c/s 4 (1) and (2) and 34 (1) and (2) of the Arms and Ammunition Act Cap. 223 R.E. 2002 and the court admitted the above tendered exhibits as exh. P1, P2, P3, P4, P5 and P6 respectively as they appear."

Upon conviction, the appellant was sentenced to a term of fifteen years imprisonment and, in addition, he was ordered to pay a fine of Shs. 3,000,000/=. His appeal to the High Court was dismissed in its entirety (Ruhangisa, J.), hence this second appeal in which he seeks to impugn his own plea upon a memorandum of appeal comprised of three points of grievance.

At the hearing before us, the appellant entered appearance in person, unrepresented, whereas the respondent Republic had the services of Mr. Solomon Lwenge and Ms. Margareth Ndaweka, learned Senior State Attorneys. As it were, the appellant fully adopted his memorandum of appeal but deferred its elaboration to a later stage after the submissions of the respondent.

For his part, Mr. Lwenge supported the appeal on account that the plea was equivocal. In this regard, the learned Senior State Attorney submitted that the facts giving rise to the conviction were, seemingly, comprised of a statement which was prepared by the prosecution for the purposes of the preliminary hearing under section 192 of the Criminal Procedure Act, Chapter 20 of the Revised Edition 2002 of the Laws.

The irony, Mr. Lwenge further submitted, is in the fact that the statement was not put upon the record. That being so, he concluded, it is not vividly apparent that the statement of facts was orally adduced by the prosecutor. Having heard the learned Senior State Attorney submitting in support of his appeal, the appellant fully supported him and refrained from making any rejoinder.

Addressing the issue of contention, we think it is apt to preface our determination with the reproduction of section 228 (1) and (2) thus:-

"228 - (1) The substance of the charge shall be stated to the accused person by the court, and he shall be asked whether he admits or denies the truth of the charge.

(2) 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 appears to be sufficient cause to the contrary."

More elaborately, in the case of **Adan Vs The Republic** [1973] EA 445, the defunct Court of Appeal for Eastern Africa laid down the appropriate manner in which pleas of guilty should be recorded as well as the steps which should be followed:-

- "(i) The charge and all the essential ingredients of the offence should be explained to the accused in his language or in a language he understands;*
- (ii) the accused's own word should be recorded and, if they are an admission, **a plea of guilty should be recorded;***
- (iii) **the prosecution should then immediately state the facts** and the accused should be given an opportunity to dispute or explain the facts or to add any relevant facts.*

- (iv) if the accused does not agree the facts or raises any question of his guilty his reply must be recorded and change of plea entered; and*
- (v) if there is no change of plea a conviction should be recorded and a statement of the facts relevant to sentence together with the accused's reply should be recorded."*

[Emphasis supplied.]

Quite obviously, in the case under our consideration, the court omitted to record a plea of guilty, in the wake of the appellant's apparent admission of the offence. Much worse, from the tone of the facts giving rise to the conviction, it was seemingly the appellant and not the prosecutor who adduced the facts. To say the least, the plea was imperfect and far from being unequivocal on account of the ambiguity with respect to the source of the statement of facts.

To this end, given the shortcoming, we are minded to invoke our revisional jurisdiction under section 4 (2) of the Appellate Jurisdiction Act, Chapter 141 of the Revised Edition 2002 of the laws. In fine, the conviction and sentence meted against the appellant are, accordingly, quashed and set aside. It is further ordered that this matter be remitted to the trial court

for it to administer a fresh plea on the appellant. In the meantime the appellant should remain in custody to await the resumption of the trial.

It is so ordered.

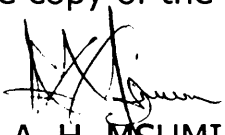
DATED at **TABORA** this 4th day of September, 2018.

K. M. MUSSA
JUSTICE OF APPEAL

S. A. LILA
JUSTICE OF APPEAL

J.C.M. MWAMBEGELE
JUSTICE OF APPEAL

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


A. H. MSUMI
DEPUTY REGISTRAR
COURT OF APPEAL