

IN THE COURT OF APPEAL OF TANZANIA

AT BUKOBA

(CORAM: MUGASHA, J.A., MWANDAMBO, J.A. And KITUSI, J.A.)

CRIMINAL APPEAL NO. 280 OF 2019

AMOS MASASIAPPELLANT

VERSUS

THE REPUBLIC.....RESPONDENT

(Appeal from the decision of the High Court of Tanzania at Bukoba)

(Kilekamajenga, J.)

Dated 7th day of June, 2019

in

Criminal Appeal No. 50 of 2018

JUDGMENT OF THE COURT

15th & 17th December, 2020

MUGASHA, J.A.:

The Appellant herein was charged before the District Court of Biharamulo with offence of Armed Robbery c/s 287 A of the Penal Code Cap 16 RE. 2002. In the particulars of the offence it was alleged that, on 6/12/2017 at 14: 00 hrs at Runazi village within the District of Biharamulo in Kagera Region the appellant did steal one Motorcycle with registration number MC 431 BKY SUNLG valued at TZS. 2,000,000/= the property of Kazawadi s/o Constantine. It was alleged that, immediately before or after

such stealing he did use a knife to threaten one Kazawadi s/o Constantine in order to retain the said stolen property.

The charge was read over and explained to the appellant who pleaded guilty. Then, the prosecution read out the facts in support of the charge which the appellant admitted to be correct. Thereafter, the trial court proceeded to convict him and sentenced him to serve a jail term of thirty years. Before the High Court on first appeal, the appellant was not successful following after it was found to lack merit and dismissed. Unamused, the appellant has preferred the present appeal to the Court. On 23/8/2019 he filed a Memorandum of Appeal with four grounds of complaint as hereunder paraphrased:

1. That, the admission of exhibit P1 in the court evidence indicated that the hearing of the case was conducted which is bad in law.
2. That, the essence of a plea of guilty to the charge by the appellant was misconceived because of the admitted exhibit P1 in the facts of the case.
3. That, the said plea of guilty was made by inducement and it was followed by admission of exhibit P1.

4. That, the admission of exhibit P1 at the stage of reading the facts of the case prejudiced appellant's justice on what he had pleaded to.

Subsequently, on 9/10/2019 he filed another Memorandum of Appeal containing two grounds as hereunder paraphrased:

1. That, the learned first appellate judge misdirected himself to disregard that the trial court convicted the appellant without giving him an opportunity to meditate what was read over and explained to him before entering a plea of guilty.
2. That, the learned first appellate judge erred in law and fact having failed to consider that the trial court did not show in the record where the appellant agreed the facts or pleaded that it is true.

At the hearing of the appeal, the appellant appeared in person unrepresented whereas the respondent Republic was represented by Ms. Veronica Moshi, learned State Attorney.

The appellant urged the Court to adopt, consider the grounds of complaint in the two memoranda of appeal and set him at liberty. On the other hand, the learned State Attorney supported the appeal. However,

she submitted that, save for the first ground of appeal contained in the Memorandum of Appeal dated 9/10/2019, the remaining grounds are new because they were not initially raised before the High Court at the hearing of the first appeal. As such, she urged the Court not to consider them at this stage. In addressing the appellant's complaint that the first appellate court did not consider that he was convicted without being given opportunity to reflect on the charge read over to him, she argued that this was tackled by the High Court which concluded that, the appellant understood the charge and his plea of guilty was unequivocal. Thus, the learned State Attorney urged the Court to dismiss the appeal. In rejoinder, the appellant urged the Court to consider the grounds of appeal arguing that they are not new and that the plea was not voluntary considering that the prosecution tendered a Motorcycle NO. MC 431 BKY (exhibit P1) while the case was not for trial.

Having carefully considered the arguments of the parties, we shall dispose the appeal after examining the record before us.

In a second appeal, usually the Court will look into matters which came up in the lower courts and were decided. It will not look into matters which

were neither raised nor decided either by the trial court or the High Court on appeal. This was emphasized in the case of **NURDIN MUSA WAILU VS REPUBLIC**, Criminal Appeal No. 164 of 2004 (unreported) in which the Court said:

"...usually the Court will look into matters which came up in the lower courts and were decided. It will not look into matters which were neither raised nor decided either by the trial court or the High Court on appeal."

[See also **GALUS KITAYA VS REPUBLIC**, Criminal Appeal No. 196 of 2015 (unreported)]

In view of the stated settled position of the law, we shall not consider the new grounds raised before the Court. Notwithstanding the aforesaid, the appellant's complaint that admission of the motor cycle was irregular because the trial was not conducted, is in our view baseless. We say so because, the tendered motorcycle was subject of the charge of armed robbery and it constituted part of the facts of the offence charged as reflected at page 3 of the record of appeal.

Since the record shows that the appellant was convicted on his own plea of guilty to the charge of armed robbery, in terms of section 360 (1) of the Criminal Procedure Act Cap 20 RE. 2019, an appeal only lies to the extent of legality of sentence but not against conviction. This was emphasized in the case of **LAURENCE MPINGA VS REPUBLIC** [1983] TLR 166 where it was held:

(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 fully subscribe to the said decision which was followed in the case of **KHALID ATHUMANI VS REPUBLIC** [2006] TLR 79 and the Court stated thus:

"The Courts are enjoined to ensure that an accused person is convicted on his plea where it is certain that he/she really understands the charge that has been laid at his/her door, discloses an offence known under the law and that he/she has no defence to it; A plea of guilty having been recorded, a Court may entertain an appeal against conviction if it appears; that the appellant did not appreciate the nature of the charge or did not intend to admit that he was guilty of it, or that upon the admitted facts he could not in law have been convicted of the offence charged."

In the case at hand, at page 18 of the record of appeal, the High Court was satisfied that the appellant was made to understand the charge and

his plea was clear and unequivocal. This is cemented by what is reflected at page 2 of the record of appeal whereby upon being required to make a plea on the charge of armed robbery which was read over and explained to him, the appellant pleaded guilty having replied: "*Ni kweli nilimpora pikipiki Kazawadi na nilimtishia kisu*" and the court entered a plea of guilty. When the facts of the case were read over and explained to the appellant he replied as follows: "*I admit the facts above they are true*".

Therefore, in view of what transpired before the subordinate court, the appellant understood the charge and he made a clear and unequivocal plea of guilty. That apart, the charge disclosed the offence of armed robbery contrary to section 287A of the Penal Code Cap 16 RE. 2002; the appellant unequivocally pleaded guilty to the facts constituting the elements of the offence of armed robbery. Besides, since the appellant understood the charge, there is nothing to suggest that he did not intend to admit that he was guilty of the respective offence. Thus, the appellant's complaint that he was not given time to make a reflection before being required to make a plea, is an afterthought and we accordingly reject it.

All said and done, we do not find cogent reasons to fault the two courts below. The above said, the appeal is not merited and we accordingly dismiss it in its entirety.

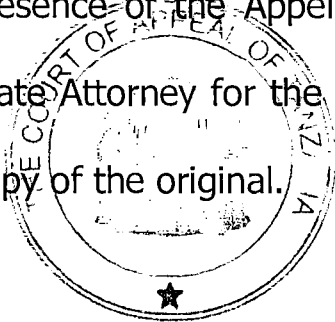
DATED at **BUKOB**A this 17th day of December, 2020.

S. E. A. MUGASHA
JUSTICE OF APPEAL

L. J. S MWANDAMBO
JUSTICE OF APPEAL

I. P. KITUSI
JUSTICE OF APPEAL

This judgment delivered this 17th day of December, 2020 in the presence of the Appellant in person and Mr. Juma Mahona, the learned State Attorney for the Respondent / Republic, is hereby certified as a true copy of the original.




E. G. MRANGU
DEPUTY REGISTRAR
COURT OF APPEAL