IN THE COURT OF APPEAL OF TANZANIA

AT IRINGA

(CORAM: JUMA, C.J., NDIKA, J.A., And WAMBALI, J.A.)

CRIMINAL APPEAL NO. 355 OF 2019

CHARLES S/O SAMWELI MBISE ..... APPELLANT

VERSUS

THE REPUBLIC ..... RESPONDENT

(Appeal from the judgment of the High Court of Tanzania at Iringa)

(Kente, J.)

dated the 13th day of August, 2019
in
DC Criminal Appeal No. 44 of 2018

.....

JUDGMENT OF THE COURT

27th & 29th April, 2021

NDIKA, J.A.:

This is a second appeal from conviction following a plea of guilty. It arises from the judgment of the High Court of Tanzania at Iringa (Kente, J.) affirming the conviction of the appellant, Charles s/o Samweli Mbise, by the District Court of Iringa for armed robbery and the corresponding mandatory thirty years' imprisonment.

When the charge was read out and explained to the appellant before the court of first instance on 20th July, 2018, he readily pleaded in Swahili

that *"Ni kweli"*, meaning *"It is true"*, whereupon the presiding Senior Resident Magistrate recorded the response as a plea of guilty. There and then, the prosecuting attorney narrated the facts of the case.

Briefly, it was narrated that the appellant, then an employee of Afro Oil Investment Limited, Iringa Branch ("Afro Oil"), on 16th July, 2018, at Ipogolo area within the District and Region of Iringa, stole the sum of TZS. 18,500,000.00 in cash, the property of Afro Oil, and that at the time of stealing, he was armed with a knife and that he threatened to use violence on Musimu d/o Hassan, in order to obtain and retain the aforesaid property. That the heist occurred after the appellant had gained ingress into the office of Musimu d/o Hassan, the Manager, as she was arranging to take the money to the bank. That the incident was reported to the police who visited the scene of the crime and later the same day arrested the appellant at Dodoma in a bus christened as *Nanikaona*, Reg. No. T.165 DAD. That the appellant was searched and found with a bag stashed with the sum of TZS. 17,990,200.00. That he confessed to the offence in a cautioned statement he recorded at Dodoma Police Station on 16th July, 2018 and an extrajudicial statement he made at Iringa on the following day before a justice of the peace.

It is noteworthy that in the course of narrating the above facts, the prosecutor produced to the court five exhibits along with details thereof. These were one, a sketch map of the scene (Exhibit P.1). Two, a search order/certificate of seizure (Exhibit P.2). Three, a knife, a key belonging to Afro Oil and a bag containing TZS. 17,990,200.00 in cash (Exhibit P.3 collectively). Four, the cautioned statement of 16th July, 2018 (Exhibit P.4). And finally, the extrajudicial statement dated 17th July, 2018 (Exhibit P.5).

The appellant's response to the narrated facts is reflected at page 6 of the record of appeal:

> *"**Accused:** I admit all what has been narrated by the prosecutor. They are true."*

Finally, the presiding Senior Resident Magistrate convicted the appellant on his own plea of guilty thus:

> *"**Court**: That the charge sheet and the facts narrated by the State Attorney do constitute the offence ... the accused is charged with. Thus, I hereby convict the accused person on his own plea of guilty for the offence of armed robbery contrary to section 287A of the Penal Code, Cap. 16 R.E. 2002."*

The appellant challenges his conviction and the corresponding sentence on five grounds whose thrust is as follows: **one**, that the appellate court erred in not finding that his plea was equivocal. **Two**, that the phrase *"Ni kweli"* or *"It is true"* does not constitute a plea of guilty. **Three**, that the narrated facts did not disclose the charged offence and that they were confusingly mixed up with the exhibits. **Four**, that it was unfair that the court of first instance read out the charge only once despite the attendant severity of the penalty for the charged offence. **Finally**, that the prosecution failed to prove its case beyond reasonable doubt.

Before us, the appellant, who appeared in person via a video link from Iringa Prison, urged us to allow his appeal on the five grounds of appeal he lodged. He then reserved his right to rejoin, if need be. On the other hand, Ms. Pienzia Nichombe, learned State Attorney, who was assisted by Ms. Elizabeth Mallya, also learned State Attorney, gallantly opposed the appeal.

Submitting, Ms. Nichombe contended that, in the first place, the appellant, having been convicted on his own plea of guilty, was barred by section 360 (1) of the Criminal Procedure Act, Cap. 20 R.E. 2002 (now R.E. 2019) ("the CPA") to appeal against the conviction but only against legality or excessiveness of the sentence imposed. However, she acknowledged that

conviction could be challenged if it was based on a plea that was not unequivocal as was stated by the Court in **Deus s/o Gendo v. Republic**, Criminal Appeal No. 480 of 2015 (unreported). In that case, this Court referred with approval to the decision in **Laurent Mpinga v. Republic** [1983] TLR 166 where the High Court (Samatta, J. as he then was) outlined four grounds upon which a conviction on a plea of guilty could be appealed against.

Having in mind the outlined grounds in **Laurent Mpinga** (*supra*), Ms. Nichombe contended that the grounds of appeal lodged by the appellant, in essence, allege that his plea was not unequivocal. It was her firm contention that the impugned conviction was based on an unequivocal plea. For the appellant pleaded guilty to the charge, saying *"Ni kweli"*, and then admitted the facts of the case unreservedly as narrated by the prosecuting attorney. Crucially, she added, the admitted facts disclosed all the ingredients of armed robbery: stealing along with the threat of use of armed violence. Moreover, she argued that the appellant did not object to the admission of any of the five exhibits unveiled by the prosecutor, more particularly the cautioned and extrajudicial statements whose contents were read out and

explained. In the premises, Ms. Nichombe urged us to dismiss the first and second grounds of complaint and find the appellant's plea unequivocal.

Coming to the third ground of appeal, Ms. Nichombe argued that the facts of the case were presented step by step with the production of the exhibits in an elaborate manner, devoid of any mix-up. On the complaint in the fourth ground, she contended that there was no need to read out the charge once again and that appellant knew the offence he was charged with as well as the severity of the resultant penalty. Finally on the fifth ground, she argued that the procedure involved in the matter did not entail proof of the charge. All the presiding Senior Resident Magistrate had to do was to satisfy himself, based on the appellant's plea to the charge and his admission to the narrated facts of the case, that his plea was unequivocal. Accordingly, the learned State Attorney urged us to find the third, fourth and fifth grounds of appeal devoid of merit and dismiss the appeal.

In a brief rejoinder, the appellant bemoaned that he did not understand what was read out to him and that his plea was imperfect. He maintained that the phrase *"Ni kweli"* as a plea to a charge was insufficient in itself and that the situation was not helped by the confusing facts of the case narrated to him. He also stressed that bearing in mind the severity of

the sentence in the matter, the presiding Senior Resident Magistrate should have been cautious in recording the plea as one of guilty and convicting him on it.

Before we deal with the merits of the appeal in the light of the submissions from both sides, we wish to express our agreement with Ms. Nichombe that generally section 360 (1) of the CPA bars entertainment of an appeal against a conviction based on a plea of guilty except to the extent or legality of the sentence imposed. That provision states that:

> *"No appeal shall be allowed in the case of any accused person who has pleaded guilty and has been convicted on such plea by a subordinate court except as to the extent or legality of the sentence."*

We are cognizant that notwithstanding the above provision, an appeal against a conviction on a plea of guilty may lie under certain circumstances as an exception to the general rule. In **Kalos Punda v. Republic,** Criminal Appeal No. 153 of 2005 (unreported), the Court cited with approval the decision of **Laurence Mpinga** (*supra*) which, at page 168, articulated the criteria for interfering with a conviction based upon a plea of guilty. These

criteria are the same ones Ms. Nichombe cited as having been referred to by the Court in **Deus s/o Gendo** (*supra*) as follows:

> *"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."*

Although Ms. Nichombe contended that the appellant faults his conviction on the ground that his plea was equivocal, it seems clear to us that apart from that contention, he alleges, within the bounds of the principle in **Laurence Mpinga** (*supra*), that his plea was a result of a misapprehension and that the admitted facts did not in law disclose the offence of armed robbery of which he was convicted. The germane question

is, therefore, whether there was in fact an unequivocal plea of guilty on which the appellant was convicted.

In the beginning, we reaffirm that an accused can only be convicted on his own plea of guilty if the court is satisfied that his plea is unequivocal. That is, where it is ascertained that he has accepted as correct facts which constitute all ingredients of the charged offence – see, for example, **Ndaiyai Petro v. Republic**, Criminal Appeal No. 277 of 2012 (unreported). As stated in the leading case of **Adan v. Republic** [1973] EA 445 decided by the defunct Court of Appeal for East Africa in a case originating from Kenya, to which we fully subscribe, it must be certain that the accused really understood the charge and that he had no defence to it.

In the instant appeal, we stated earlier that the appellant pleaded guilty to the charge after it was read over and explained to him by stating in Swahili, *"Ni kweli"*, meaning *"It is true."* This was rightly recorded by the presiding Senior Resident Magistrate as a plea of guilty. Moreover, after the facts of the case were narrated by the prosecuting State Attorney, again as shown earlier, the appellant admitted the facts unreservedly as nothing but the truth. Along with the facts, the prosecuting attorney methodically introduced five exhibits to which the appellant had no objection. It is

significant that the exhibits included the cautioned and extrajudicial statements whose incriminating contents were read out and explained. Having examined the facts of the case put to him, we entertain no doubt that they, on their totality, disclosed the core of the charged offence, that he, on 16th July, 2018, at Ipogolo area within the District and Region of Iringa, stole the sum of TZS. 18,500,000.00 in cash, the property of Afro Oil, and that at the time of stealing, he was armed with a knife and that he threatened to use violence on Musimu d/o Hassan, in order to obtain and retain the aforesaid property. Taking into account that the appellant, having pleaded guilty to armed robbery, completely admitted the truth of the narrated facts, we share the view taken by the first appellate Judge that he was rightly convicted on his own unequivocal and unblemished plea of guilty. This takes care of the first and second grounds of appeal, which we find lacking in merit.

The third ground of appeal is plainly baseless. As already stated, the narrated facts clearly disclosed the offence of armed robbery. From the facts of the case and the exhibits that were presented so methodically and meticulously, we discern no confusion in the process. Certainly, the appellant was before the court of first instance unrepresented but it is clear that the

presiding Senior Resident Magistrate took the care that he should in ensuring that the appellant understood the charge against him as well as the relevant facts before he sought his reply to the charge, the facts and the exhibits.

In the same vein, the complaint in the fourth ground is beside the point. As rightly submitted by the learned State Attorney, there was no need for the charge to be read out once again after the appellant's initial plea was recorded. The presiding Senior Resident Magistrate followed the applicable procedure fully. There is no doubt that the appellant had an opportunity to recant his plea of guilty until right before his sentencing but he did not do so.

The complaint in the final ground that the offence was not proven beyond peradventure is clearly born out of misconception of the law. Once the appellant had pleaded guilty and then admitted the facts of the case disclosing all the elements of armed robbery, his plea had to be considered unequivocal. Indeed, it is settled that the applicable procedure on a plea of guilty involves no production of proof of the charge but a procedure for ascertaining if the plea is unequivocal – see, for example, **Adan** (*supra*); **John Faya v. Republic**, Criminal Appeal No. 198 of 2007; and

Constantine Deus @ Ndinjai v. Republic, Criminal Appeal No. 54 of 2010 (both unreported). The fifth ground of appeal, therefore, fails.

In fine, we find the appeal unmerited. We dismiss it in its entirety.

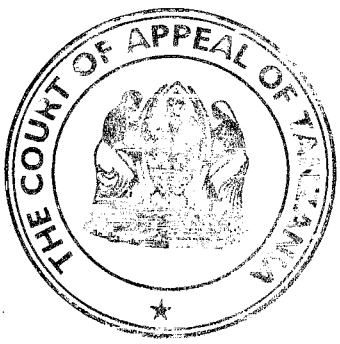
DATED at **IRINGA** this 29th day of April, 2021.

I. H. JUMA
CHIEF JUSTICE

G. A. M. NDIKA
JUSTICE OF APPEAL

F. L. K. WAMBALI
JUSTICE OF APPEAL

The Judgment delivered this 29th day of April, 2021 in the presence of the Appellant in person linked via video conference at Iringa Prison and Ms. Edna Mwangulumba, State Attorney for the respondent/Republic is hereby certified as a true copy of the original.



K. D. MHINA
REGISTRAR
COURT OF APPEAL