

**IN THE COURT OF APPEAL OF TANZANIA**

**AT DAR ES SALAAM**

**(CORAM: KWARIKO, J.A., MAIGE, J.A. And MWAMPASHI, J.A.)**

**CRIMINAL APPEAL NO. 200 OF 2020**

**REVOCATUS MUGISHA.....APPELLANT**

**VERSUS**

**THE REPUBLIC .....RESPONDENT**

**[Appeal from the decision of the High Court of Tanzania, at Dar es Salaam]**

**(De-Mello, J.)**

**dated the 18<sup>th</sup> day of March, 2020**

**in**

**(RM) Criminal Appeal No. 163 of 2019**

-----

**JUDGMENT OF THE COURT**

*11<sup>th</sup> & 22<sup>nd</sup> February, 2022*

**KWARIKO, J.A.:**

This appeal is against the decision of the High Court of Tanzania, Dar es Salaam District Registry at Dar es Salaam which dismissed the appellant's appeal. Initially, the appellant was among seven accused persons who were arraigned before the Court of the Resident Magistrate of Dar es Salaam at Kisutu in Economic Case No. 32 of 2018. The appellant and the 1<sup>st</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, and 6<sup>th</sup> accused persons who are not parties to this appeal, were jointly charged with the offence of aiding and abetting contrary to section 45 (1) (b) of the Immigration Act [CAP 54 R.E. 2016]. The particulars of the offence were that on divers dates

between 1<sup>st</sup> June, 2017 and 17<sup>th</sup> May, 2018 within the City and Region of Dar es Salam the accused persons aided one Bo Song, a Chinese National, to engage in an occupation in the United Republic of Tanzania, without being in possession of a valid residence permit.

When the charge was read over to the accused, they pleaded guilty and they were convicted and sentenced to pay a fine of TZS 500,000.00 each or two years imprisonment in default. However, the appellant and two others, who are not parties to this appeal, having been aggrieved by the conviction and sentence, filed an appeal before the High Court raising the following four grounds of appeal.

1. *"The trial Court erred in law to convict the appellants on a defective charge which does not disclose any offence known in the law;*
2. *The trial Court erred in fact to convict the appellants on facts which do not establish any offence known in law;*
3. *The trial Court erred in law and fact to convict the appellants on an equivocal and involuntary plea; and*
4. *The trial Court erred in law to convict the appellants without jurisdiction".*

The High Court ordered the appeal to be heard by way of written submissions. At the end, in its decision, the High Court disposed of the appeal on the basis of the third ground of appeal only. It was found that the appellants who were convicted on their own plea of guilty were barred from appealing in terms of section 360 (1) of the Criminal Procedure Act [CAP 20 R.E. 2019] and thus the appeal was dismissed.

Aggrieved, the appellant has come before this Court on a second appeal with the following three grounds of appeal:

- "1. The High Court erred in law in holding that since the appellant was convicted on his own plea he could only appeal against the extent or legality of the sentence imposed by the trial court;*
- 2. The High Court erred in law for addressing only one ground touching the equivocality of the appellant's plea of guilty and leaving other grounds of appeal which sought to assail the validity of the charge and jurisdiction of the trial court; and;*
- 3. The High Court erred in law and fact in finding that the appellant's plea was unequivocal and that his appeal to the High Court was an afterthought amounting to abuse of court process."*

When the appeal came for hearing, Mr. Timon Vitalis, learned advocate appeared for the appellant, whilst Ms. Grace Mwanga learned Senior State Attorney together with Mr. Adolf Verandumi, learned State Attorney, represented the respondent Republic.

For the reasons which will be apparent in the course of the judgment, we shall start our deliberation with the second ground of appeal. Arguing this ground, Mr. Vitalis submitted that the High Court Judge erred in deciding on issues regarding the merit of the case leaving behind issues of law in respect of jurisdiction and propriety of the charge.

The learned counsel argued that, the appellant questioned the jurisdiction of the trial court since after substitution of the charge, the prosecution did not file a fresh consent and certificate of the Director of Public Prosecutions to confer jurisdiction to the Court of Resident Magistrate to try an economic case. To fortify the foregoing, Mr. Vitalis referred us to a persuasive decision of the High Court of Tanzania in the case of **Godfrey Edward Mbuzu v. R**, Criminal Appeal No. 57 of 2017 (unreported). He contended further that, since the charge is the foundation of any criminal case, the High Court was supposed to decide the ground in that respect before the merit of the case. In support of

the foregoing, Mr. Vitalis relied upon the case of **Simon Kitalika v. R**, Criminal Appeal No. 468 of 2016 (unreported).

As to the way forward, Mr. Vitalis suggested two options. One, to remit the record to the High Court for it to consider all grounds of appeal; and two, the court to invoke its revisional powers and step into the shoes of the High Court to decide those grounds.

On her part, Ms. Mwanga commenced her address by opposing the appeal. As regards the second ground, she argued that the High Court did not err by deciding the appeal on the basis of only one ground of appeal as it found the same sufficient to dispose of the matter and more so because the appellant's plea was unequivocal and there were no circumstances upon which the appellant could have appealed against it. To support her contention, she referred us to the decision of the court in **Charles Samuel Mbise v. R**, Criminal Appeal No. 355 of 2019 (unreported).

The learned Senior State Attorney contended further that the High Court was satisfied with the propriety of the charge and the jurisdiction of the trial court was established since consent and certificate were filed thus no fresh ones were needed because in substituting the charge, only

the number of accused persons was reduced. In rejoinder, Mr. Vitalis maintained his earlier submissions.

Having considered the contending submissions by the learned counsel, it is not disputed that the High Court Judge determined the appellant's appeal on the basis of the third ground of appeal only as she was convinced that it was sufficient to dispose of the appeal. It is our considered view that although the appellate court is not obliged to consider all grounds of appeal, it is supposed to resolve all complaints raised in the appeal, separately or jointly as it will deem just. We find support in this respect in the decision of the Court in the case of **Malmo Montage Konsult AB Tanzania Branch v. Magret Gama**, Civil Appeal No. 86 of 2001 (unreported) where it was stated thus:

*"In the first place, an appellate court is not expected to answer the issues as framed at the trial. That is the role of the trial court. It is however, expected to address the grounds of appeal before it. Even then, it does not have to deal seriatim with the grounds of appeal as listed in the memorandum of appeal. It may, if convenient, address the grounds generally or address the decisive ground of appeal only or discuss each ground separately."*

See also the decisions in **Simon Edson @ Makundi v. R**, Criminal Appeal No. 5 of 2017; and **Nyakwama s/o Ondare @ Okware v. R**, Criminal Appeal No. 507 of 2019 (both unreported).

In the case at hand, the Judge decided only one ground of appeal leaving three others, all of them raising points of law, unresolved. For instance, the fourth ground questioned the jurisdiction of the trial court to try the case. This ground ought to have been determined first for the High Court to satisfy itself as to whether the trial court was properly clothed to try the case. The appellant also complained in the first ground that he was convicted on the basis of the defective charge. It is trite law that, the charge is the foundation of criminal trial thus it is pertinent to ensure its propriety before proceeding with other matters. In the case of **Simon Kitalika** (supra) cited to us by Mr. Vitalis, the Court was faced with an akin scenario and it stated thus:

*"Without doubt, criminal proceedings are initiated by a charge and determination of the competence of a charge is important in order to proceed any further on any other matters for determination in the appeal before the Court."*

It is thus without doubt that the first appellate court erred by its failure to decide other grounds of appeal which raised points of law thus

vitiated the judgment which we hereby quash. Having decided the second ground of appeal in the affirmative, other grounds die naturally.

In the event, we allow the appeal. As to the way forward, in the circumstances of this case, we decline the invitation by Mr. Vitalis to step into the shoes of the High Court to decide the appellant's grounds of appeal. We thus remit the record to the High Court for the appellant's appeal to be decided as a whole basing on the grounds raised and the submissions filed by both parties for and against the appeal. The appeal shall be heard by a different judge according to the law.

**DATED** at **DAR ES SALAAM** this 21<sup>st</sup> day of February, 2022.

M. A. KWARIKO

**JUSTICE OF APPEAL**

I. J. MAIGE

**JUSTICE OF APPEAL**

A. M. MWAMPASHI

**JUSTICE OF APPEAL**

This Judgment delivered on 22<sup>nd</sup> day of February, 2022 in the presence of Mr. Baraka Msana ,learned counsel for the appellant and Ms. Yasinta Peter, learned Senior State Attorney for the respondent/Republic, is hereby certified as a true copy of original.



A handwritten signature in black ink, appearing to be "A. L. Kalegeya", is written over a horizontal line.

A. L. KALEGEYA  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**