IN THE COURT OF APPEAL OF TANZANIA
AT IRINGA

CORAM: WAMBALI, J.A., LEVIRA, J.A. And MAIGE, J.A.)

CRIMINAL APPEAL NO. 510 OF 2020

CHRISTIAN JOSEPH MUANDA ..... APPELLANT

VERSUS

THE REPUBLIC ..... RESPONDENT

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

(Kente, J.)

Dated the 27th day of July, 2020

in

DC Criminal Appeal No. 43 of 2019

JUDGMENT OF THE COURT

3rd & 7th November, 2022

WAMBALI, J.A.:

The appellant Christian Joseph Muanda together with James Stephano Mtweve (not party to this appeal) appeared before the District Court of Ludewa (the trial court) at Ludewa on 11th September, 2017, where they were confronted with a charge of armed robbery contrary to section 287A read together with section 287C of the Penal Code [Cap. 16 R.E. 2002, now R.E. 2022].

On that date, when the charge was read over and explained to them, the appellant is recorded to have pleaded guilty. For clarity, he

stated as follows: "*It is true I had stolen the battery of the complainant and threaten (sic) the complainant by using a panga*". James Stephano Mtweve did not plead guilty and thus a plea of not guilty was entered.

On the part of the appellant, having pleaded guilty, the trial Resident Magistrate required the prosecutor to adduce the facts of the case, which he did, and in the end, when the appellant was asked to respond on the truthfulness and correctness of the facts, he replied as follows: "*the facts are true and correct.*" The trial Resident Magistrate thus convicted the appellant of the offence of armed robbery and sentenced him to thirty years imprisonment. The trial Resident Magistrate then adjourned the trial of the appellant's co-accused to a later date.

Aggrieved, the appellant unsuccessfully appealed to the High Court. Still discontented, he has appealed to the Court. The memorandum of appeal contains two grounds of appeal as hereunder:

> "*1. That, both the trial and the first appellate courts erred in law in hearing and deciding the case against the appellant while the charge sheet was totally defective for failure to address the competent court to hear and decide the case.*

2. *That, the first appellate court erred in law in affirming the decision of the trial court without taking into account that his plea of guilty was equivocal."*

It is noteworthy that, the same complaints were also presented before the first appellate court.

At the hearing of the appeal, the appellant appeared in person with no legal representation, whereas Mr. Matiku Nyangero and Mr. Juma Mahona, both learned State Attorneys, represented the respondent Republic.

Upon being invited to submit in support of the appeal, the appellant adopted the grounds of appeal and urged us to consider them and allow the appeal. He then opted to let the learned State Attorney respond first while he retained the right to rejoin.

Mr. Mahona who addressed us, contested the appeal and supported the decision of the first appellate court on the contention that the appellant's complaints lacked substance.

Responding to the first ground, Mr. Mahona readily conceded that the charge sheet which was presented before the trial court did not indicate the name of that court. On the contrary, he stated, the heading started with the title "TANZANIA *POLICE FORCE*" followed by the words

"CHARGE SHEET". Nonetheless, he strongly argued that the omission was not fatal and did not prejudice the appellant in view of the fact that the contents of the charge complied with the requirement of the law stipulated under the provisions of sections 132 and 135 of the Criminal Procedure Act [Cap. 20 R.E. 2002, now R.E. 2022] (the CPA). He emphasized that though the respective document lacked the name of the trial court, it contained the title "*CHARGE SHEET*" below the words "TANZANIA *POLICE FORCE*". Besides, he submitted, the charge sheet disclosed the offence section and the particulars which sufficed to have enabled the appellant to know the allegation which he stood accused.

He thus submitted that lack of indication of the name "Ludewa District Court" as the trial court on top of the charge sheet, did not occasion miscarriage of justice. To support his submission, he referred us to the decision in **Maulid Juma Bakari @ Damu Mbaya and Another v. The Republic**, Criminal Appeal No. 58 of 2018 cited in **Ezra Peter v. The Republic**, Criminal Appeal No. 409 of 2019 (both unreported).

In the circumstances, Mr. Mahona prayed for the rejection of the first ground of appeal.

In rejoinder, the appellant emphasized that the prosecutor's error of inserting the words "TANZANIA *POLICE FORCE"* instead of Ludewa District Court occasioned miscarriage of justice as he was wrongly tried and convicted based on an incurable defective charge.

As we have intimated above, the same complaint was placed before the first appellant court and was rejected. In his decision, the first appellate judge made reference and reproduced the provisions of section 132 of the CPA concerning the most important requirement on the contents of the charge or information. He basically reasoned that the said charge contained information on the nature and particulars of the offence and the allegation which confronted the appellant. He then stated that through those information, the appellant was made aware of the offence he stood charged and its ingredients, what was robbed and the person who was threatened with a weapon, namely "*panga"*. In the end, the first appellate judge formed an opinion that, though the charge sheet did not indicate the name of the court in which it was lodged, the appellant was tried and convicted by a court with the requisite competent jurisdiction and thus the omission was a curable defect under the provisions of section 388 (1) of the CPA.

We entirely agree with the reasoning of the first appellate judge as we are settled that the omission to indicate the name of the trial court was a curable defect. Besides, we associate ourselves with what we stated when we faced an akin situation in **Maulid Juma Bakari @ Damu Mbaya and Another** (supra):

> *"That said, indication or non-indication of the court to try an offence is immaterial and does not invalidate the charge. The same is the case where the charge is titled "TANZANIA POLICE FORCE" which, in our view, refers to where the same originated. This cannot be said to have any prejudice to the appellant."*

Similarly, in the case at hand, as correctly submitted by Mr. Mahona, we do not find any prejudice which was caused to the appellant since the important contents of the charge prescribed under section 132 of the CPA were disclosed. More importantly, the particulars in the charge sheet made the appellant aware of the offence he stood charged and its ingredients.

In the event, we find no merit in the first ground of appeal, and accordingly dismiss it.

With regard to the second ground of appeal, Mr. Mahona argued that the complaint of the appellant that he was wrongly convicted

because his plea was equivocal found no support in the record of proceedings of the trial court. He submitted that according to the record of appeal, the appellant not only pleaded guilty to the charge, but also agreed that the facts of the case which were narrated by the prosecution were true and correct. He emphasized that in his plea, the appellant explained further that during the commission of the offence, he threatened the complainant with a Panga which gave credence to the fact that the offence of armed robbery was proved. He thus argued that the appellant's plea was unequivocal and therefore, he is barred to appeal against conviction as prescribed under section 360 (1) of the CPA. The learned State Attorney supported his submission by reference to the decision in **Charles Samwel Mbise v. The Republic**, Criminal Appeal No. 355 of 2019 (unreported). Mr. Mahona submitted further that to demonstrate that the appellant had intended and ultimately pleaded guilty and agree to the narrated facts; during mitigation, he also stated that he committed the offence because he was in need of money to meet some family commitments, including school fees for his young brothers.

In the circumstances, Mr. Mahona concluded that according to the material on the record of appeal, there is no dispute that the appellant's

plea was unequivocal. He therefore, pressed us to dismiss this ground and the entire appeal.

The appellant rejoined briefly and forcefully emphasized that his plea was equivocal because during the trial he was not aware of what transpired. He contended that he did not even know that he pleaded guilty until he found himself in prison for the offence he was charged with. Besides, he stated that the charge of armed robbery was not proved to the required standard because the alleged stolen properties and the panga which was allegedly used during the commission of the offence were not tendered before the trial court as exhibits. To support his argument, he made reference to the decision of the Court in **Deus s/o Gendo v. The Republic**, Criminal Appeal No. 480 of 2015 (unreported) and implored us to allow the appeal and set him free.

Basically, in terms of section 361 (1) of the CPA, no appeal lies against conviction except as to the extent of legality of the sentence on the plea of guilty. The section provides as follows:

> *"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."*

However, there are some circumstances in which the accused's plea may be considered as equivocal. In this regard, in **Kalos Punda v. The Republic**, Criminal Appeal No. 153 of 2005 (unreported), the Court affirmed the decision in **Laurent Mpinga v. The Republic** (1983) T.L.R. 166 in which Samatta, J (as he then was) outlined the circumstances under which an appeal by the accused can lie on a plea of guilty:

> *"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 admitted facts he could not in law have been convicted of the offence charged."*

In the case at hand, having regard to the materials on record, we are of the settled view that none of the circumstances exposed in **Laurent Mpinga's** case applies. We say so because, considering the

words which the appellant stated during his plea of guilty as reproduced above, there is indication that he had intended to plea as such. It is apparent that apart from his plea of guilty, he admitted to the detailed facts narrated by the prosecution as being true and correct. In this regard, it cannot be disputed that he duly understood the charge that he confronted as its particulars disclosed the nature of the allegation and the ingredients of the offence known under the law.

We are further fortified in or view by the fact that the statement appellant made during mitigation was a clear indication that he knew at he did and that his plea of guilty was not out of context. For ity, we better reproduce what he stated:

> *"I did so because I wanted money so as to pay for the school fees of my young brothers and you cannot get a job there unless you pay money."*

Having regard to what the appellant stated in the final part of his trial, with respect, we cannot accept his contention that during the trial, he was not aware of what transpired until he found himself in prison.

As regards the appellant's complaints that the offence of armed robbery was not proved beyond reasonable doubt because the proceeds of crime and the weapon used were not tendered in court, we take it as a misconception of the law. At this juncture, we associate ourselves

with what we stated in similar situation in **Charles s/o Samwel Mbise v. The Republic** (supra) thus:

> *"The complaint in the final ground that the offence was not proven beyond paradventure 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. The Republic****, Criminal Appeal No. 198 of 2007; and* ***Constantine Deus @ Ndinjai v. The Republic****, Criminal Appeal No. 54 of 2010 (both unreported)."*

In the event, we find the decision of the Court in **Deus s/o Gendo v. The Republic** (supra) relied upon by the appellant to support his argument distinguishable. This is because, unlike in the present case, in the former, the Court concluded that the plea was equivocal because all the essential elements of the offence the appellant was charged with had not been clearly spelled out.

In the result, the second ground fails for lacking substance.

In the final analysis, having regard to the deliberations above and the decision we have reached in both grounds of appeal, we have no hesitation to conclude that this appeal has no merit. We therefore, dismiss the appeal in its entirety.

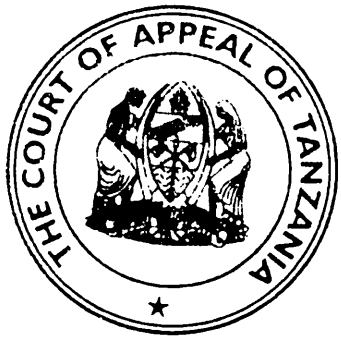
DATED at **IRINGA** this 5th day of November, 2022.

F. L. K. WAMBALI
JUSTICE OF APPEAL

M. C. LEVIRA
JUSTICE OF APPEAL

I. J. MAIGE
JUSTICE OF APPEAL

The Judgment delivered this 7th day of November, 2022 in the presence of the appellant in person and Ms. Veneranda Masai, learned State Attorney for the Respondent/Republic, is hereby certified as a true copy of the original.



J. E. FOVO
DEPUTY REGISTRAR
COURT OF APPEAL