

IN THE HIGH COURT OF TANZANIA

AT MTWARA

HIGH COURT CRIMINAL APPEAL NOS.51 & 52 OF 1981
Original Criminal Case No. 26 of 1981 of the
District Court of Lindi District At Lindi
Before E.J. Nyamasagara, Esq. Resident Magistrate

ISSA MOHAMED APPELLANTS
YUSUFU BAKARI

Versus

THE REPUBLIC RESPONDENT

CHARGE: Rogues and Vagabonds c/s 177(3) of the Penal
Code.

J U D G E M E N T

MUSHI, J.

The appellants, Issa Mohamed, 1st appellant and Yusufu Bakari 2nd appellant and another who has not appealed were charged and convicted on their own pleas of guilty for the offence of being rogues and vagabonds c/s 177(3) of the Penal Code and were each sentenced to three months imprisonment. They are appealing against such conviction and sentence.

The particulars in the charge sheet read as follows and quote:

Particulars of the Offence

That the persons jointly charged on 2nd day of February, 1981 at about 13.00 hours within the Township, District and Region Lindi, being persons suspected reputed thieves who has no visible means of subsistence, did fail to give accounts themselves when required by Inspector John Charle who is a Police Officer of Lindi Police Station".

When the charge was read to the appellants they replied:

"It is true"

Pleas of guilty was accordingly entered and facts were adduced as follows:

"The facts are as follows: the accused persons listed on the charge sheet were apprehended at Likotwa area in Lindi Township in wake of tracing people with no fixed abodes. In the course of rounding up people with no visible means of subsistence the police detectives reached Likotwa where many people hide

themselves and drink tembo. "Inspector Chale who led members of people's militia to Likotwa and arrested the accused persons and many others. In total 9 people were arrested and brought to Lindi Police Station for interrogation. Those who gave reasonable explanation were released except the accused persons. Six people amongst the accused persons were released and the three people were brought to court to answer the present charge".

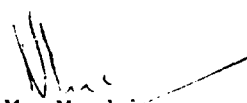
Again the appellants are recorded as having said:

"I admit the facts are correct"

The appellants were convicted and sentenced to three months imprisonment. The facts as adduced have not stated any fact relating to the offence which the appellants were charged with. All what the alleged facts state is what happened at the time the appellants were arrested. The alleged facts therefore did not disclose an offence for which the appellants could lawfully be required to state whether they agreed or not. It has been stated by this Court time without number that before an accused person can be convicted on his own plea the trial magistrate must satisfy himself that all the ingredients of the offence for which the accused is pleading have been clearly disclosed. The trial magistrate must first be satisfied that the facts have disclosed an offence before the accused is called upon to state whether he agrees with the facts or not. If the facts do not disclose an offence, the trial magistrate should enter a plea of not guilty and proceed to full trial. For the foregoing reasons, the appellants were convicted for an offence whose facts were not disclosed. This is illegal. The conviction is quashed and the sentence set aside. As the appellants had already served the sentence when the appeal was admitted, I make no order as to their release. For the same reasons, by the exercise of my revisional powers and for similar reasons, the conviction on against Omari Makaila who was convicted in the same case, is quashed and sentence is set aside.

In the same trial, the appellants were convicted for contempt of court c/s 114(c) of the Penal Code and were sentenced to three years imprisonment. They are appealing against conviction and sentence as well. The record shows that the appellants created a row in court after the sentence was pronounced. The trial magistrate took cognizance of the offence and proceeded to

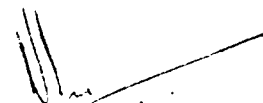
deal with the case summarily. The appellants were asked to show cause as to why they should not be convicted for having created disturbance during judicial proceedings. They each stated that they were out of their senses and requested for leniency. They were convicted and sentenced to three years imprisonment. The conviction is proper but the sentence is illegal. The maximum sentence provided for this offence is six months imprisonment or shs.500/= fine. As the charge was under section 114(c) and the matter was dealt with during the same day, then in so far as punishment was concerned, the matter fell under sub-section 2 of the same section which provides a fine of shs.400/= or one month imprisonment in default. A glance to the relevant section before imposing the sentence would have saved us the embarrassment. The sentence of three years imposed on the appellants is set aside. As the appellants have already served the legal sentence when the case was admitted, I do not substitute any other sentence. And further as the appellants were admitted to bail pending the hearing of the appeal, I make no release order from the prison. The appellants liberty shall continue unrestrained in sofar as this case is concerned. The bail bond is accordingly set aside.


N.M. Mushi

Judge

30.4.82

Judgement read in chambers before Mr. Kaduri, State Attorney.


N.M. Mushi

Judge

30.4.82