

IN THE HIGH COURT OF TANZANIA

AT DAR ES SALAAM

CRIMINAL APPEAL NO: 182 OF 2003

(Originating from Criminal Case No: 963
of 2003 PM's Court, Sokoine Drive at
Dar es Salaam)

VALERIAM M. MCHUMU APPELLANT

V B D C U S

THE UNITED REPUBLIC RESPONDENT

JUDGMENT

MANDIA, J.

The appellant appeared before the ^{court of} Resident Magistrate of Dar es Salaam at Sokoine Drive on a charge sheet containing two counts of contravening the Township Rules. The case in the Lower Court ^{was} cited Criminal Case Number 963 of 2003. The proceedings of the lower court shows that when the appellant appeared before the court on 15/10/2003 the trial Senior Resident Magistrate noted that the accused person before her had pleaded guilty to the first count. The learned Senior Resident Magistrate then adjourned the matter to 23/10/2003 for hearing of evidence on the second count. On 23/10/2003 the case was adjourned to 25/11/2003 for mention. No reason was given for the adjournment. On 25/11/2003 which was the date set for the case to be mentioned, the prosecution withdrew the second count and proceeded to move the court to give an order of demolition. The court obliged. The order of demolition did not go well with the appellant and he preferred an appeal to this court.

Mr. Ngeleshi, acting for the appellant, argued in appeal that the lower court misdirected itself in not taking the appellant's plea. Miss Gumbula, learned State Attorney appearing for the Republic did not support the conviction.

This was not surprising as there was marked departure from procedure on taking pleas as laid down in Section 228 of the Criminal Procedure Act. If ever there was a plea of guilty, the trial court was mandated to record the accused person's plea "as ~~far~~ ^{nearly} as possible in the words ~~nearly~~ ^{nearly} he uses". This is provided in Section 228(2) of the Criminal Procedure Act. The same section also lays it down that after recording the plea of guilty, the trial court shall proceed to "convict the accused person and pass sentence or make an order against him, unless there shall appear to be sufficient cause to the contrary". In the present case there is no conviction and no sentence but there is an order of demolition. The trial court also used the past ~~reference~~ in making a remark on the court record. I think there is need to record the ~~remark~~ ^{remark}

UCT: Since accused admitted 1st count and was convicted for the same what follows is the ~~order~~ ^{order} for demolition".

Taken as it is, this remark does not make sense. It was Mr. Ngeleshi who made sense of this remark when he revealed that there was an original court record in which proceedings were recorded. Apparently the original record got misplaced and a duplicate file was opened. The Learned Senior Resident Magistrate appears to have "linked" the two files, hence the remark made in the duplicate file. This was wrong. The learned Senior Resident Magistrate should have taken the plea afresh in the duplicate record and proceeded as the law required. Since this was not done the proceedings in the lower court are a nullity. The proceedings of the lower court are quashed and the demolition order made is set aside. The case should be heard de novo before another magistrate of competent jurisdiction.

It is so ordered.

Delivered.

Dated this 7th June, 2004.


W. S. MANDIA
JUDGE