IN THE HIGH COURT OF THE UNITED OF TANZANIA

DISTRICT REGISTRY OF BUKOBA

AT BUKOBA

(HC) CRIMINAL APPEAL. No. 5/2017.

(Arising from Criminal Case No. 414/2016 of the District Court of Karagwe)

1. **CHRISTOPHER CHRISTIAN**
2. **BINOMTONZI SABITI** } ..... **APPLICANTS**

VERSUS

THE REPUBLIC ---------- ---------- **RESPONDENT**

JUDGEMENT

15/3/2018 & 3/5/2018

Kairo, J.

The Appellants in this appeal are challenging the decision of the District Court of Karagwe in Criminal Case No. 414/2016 delivered on 20/10/2016.

The genesis of this appeal briefly is that the Appellants were charged with three counts; first unlawful entry into the game reserve c/s 15 (1) and (2) and second count unlawful possession of weapon c/s 17 (1)&(2) and third

count unlawful possession of Government Trophy c/s 86 (1) (2) (c) (ii) all of Wildlife Conservation Act No. 5/2009.

They were convicted and sentenced to serve twenty six years imprisonment in total on their own plea of guilty when reminded of their charges and required to plead thereto. However when the charges were read to them for the first time on 6/10/2016, they both denied all of the counts.

The Appellants were aggrieved and decided to appeal to this court against the conviction and sentence raising seven grounds of appeal as follows:-

1. That, the learned District magistrate erred in law and fact for failure to use the simplest language to the appellants who failed to understand the language used by the magistrate during the proceeding of the case and even the magistrate failed to interpret all ingredients of the offence in the simplest language to the appellants who did not know how to read and write in this case contrary to section 211 of the criminal procedure act (Cap 20 R:E 2002)

2. That, the learned district magistrate erred in law and fact to admit the plea of guilty of the appellants who did not really understood the position where he pleaded guilty as well as the statement of facts and additional facts were not read properly to the appellants contrary to the decision of ADAN V.R 1973 EA 445.

3. That, the learned district magistrate grossly erred in law and fact for failure to identify which type of wild animal were killed and even there was no any specific kind of type of wild animals was brought in the court of law to ascertain the facts of the allegation before sentencing the appellants hence magistrate made wrong decision against the appellants.
4. That, the learned district magistrate grossly erred in law and fact to entertain this false allegation without any relevant meat tendered in the court of law as an exhibit to prove the charge against the appellants hence the magistrate made wrong decision against the appellants.
5. That, the learned district magistrate grossly erred in law and fact for failure to know that the appellants were not found in possession of the meat of wild animal, **after all no meat was measured in weight so as to determined the real value of the meat** hence the magistrate decision was wrongly entered against the appellants.
6. That, the learned district magistrate misdirected to overlook the **mitigation factors of the appellants in page 7 of** the sentence during the assessment of the sentence which caused the magistrate to enter wrong decision through convicting the appellants 26 year imprisonments without any reasonable cause contrary to the decision of the case of TABU PIKWA V.R. 1988 TLR 48.

7. That, the learned district magistrate grossly erred in law and fact by not considering the principle of equality for the appellants during assessment of the sentence where by the magistrate failed to allow public prosecutor to prove all allegations beyond reasonable doubt against the appellants hence the magistrate failed to scrutinize all the hearsay evidence tendered by the public prosecutor.

The Appellants are self represented and on the hearing date they prayed the court to adopt their grounds of appeal as they have nothing useful to add. The Respondent who opted to reply the grounds of appeal when invited for oral submission was represented by Mr. Haruna Shomari, the State Attorney. In his oral submission, the State Attorney submitted that the Respondent was supporting the appeal to a certain extent as he started by submitting that the Appellants were charged of three offences as per charge sheet. That on 20/10/2016 when the offences were read to them they stated *"It is true"* (page 4 proceedings) and after that, the trial magistrate prepared the facts but the records are silent as to whether the same were read to the accused. (page 5). The State Attorney went on that he was surprised that the trial magistrate then went further and convicted the accused (page 6 proceedings) and sentenced them. The State Attorney thus concluded that he thus concede that the first and second grounds of appeal have merits. He added that the magistrate was required to go further so as to know exactly what the Appellant meant by the words *"it is true"*. He cited the case of *Jackson Sumuni vrs R [1967] HCD 152* whereby the case held that

the words *"it is true"* are not sufficient to show that the accused has admitted to the commission of the offence. The State Attorney also argued that the magistrate was required to explain the elements of the offence and explain each of them so that the accused can admit to each specifically considering that the offences charged were technical and accused were unrepresented. The State Attorney went further to submit that according to section 360 (1) of the CPA Cap 20 RE 2002, no appeal is to be allowed when the Appellant has admitted to the commission of the offence charged unless the appeal is against sentence. However the said general rule has got an exception and quoted the case *of Laurent Mpinga vrs R [1983] TLR 166 wherein Samata C.J.* (as he then was) which held that:

" there is no right of appeal against a conviction based on a plea of guilty but on exception that:-

(1). the Plea was ambiguous

(2). the plea was taken under mistake

(3). the plea was taken under misapprehension

The State Attorney argued that according to above exception the words *"it is true"* are ambiguous under (1) above and prayed the court to allow this appeal as a result and order *tri – denovo* from the P.H. stage when the accused were to enter plea.

When invited to make their rejoinder the 2nd Appellant submitted that, the trial court was unjust as submitted by the State Attorney and prayed the court to allow the appeal and grant their prayers in the petition of appeal.

The 1st Appellant on his part had nothing as a rejoinder.

Having heard the submission by the State Attorney conceding to the merits of the 1st and 2nd grounds of appeal, and having gone through the court record, the court observed that both of the Accused on 6/10/2016 denied all of the three counts when the charge was read over to them and the court granted them bail. It was further observed that when the matter was scheduled for Preliminary Hearing (PH) on 10/10/2016. When the accused were reminded of their charges and required to plead they both said *"It is true"* and the court entered a plea of guilty. It was further observed that, the court then entered a plea of guilty against the accused, prepared the facts out of which it made a finding that the accused pleaded guilty and convicted them accordingly. The court finally sentenced them to serve 26 years in total for each accused or pay the fine stipulated in lieu of (proceedings pages 4 – 7 of the proceedings)

The issue for determination is whether the words *"it is true"* amounts to unequivocal plea of guilty in law".

It is now settled that when the accused's plea indicates that he or she is admitting to the truth of the charge, the trial court should call upon the public prosecutor to give facts of the case so that strict proof of the charge

beyond reasonable doubt is established [**Refer the case of Yonasani Egalu and Others vrs R 9 EACA 95].** I am very much aware that guiltiness can be proved by evidence or may be confessed. However it is equally true that the court is only to convict an accused person on a plea of guilty, only if it is certain that the accused understands the charge and intended to plea guilty and has no defence to the charge. The wanting question in the light of what transpired in court for the case at hand is whether the prosecution or even the court which prepared the facts of the case has read them over to the Appellants at the trial court so as to rule out that the case was proved beyond reasonable doubt.

Applying the requirement as stipulated in the case of **Yonasani Egalu** (supra) it is apparent that the facts were not read to the accused as rightly argued by the Learned State Attorney. The courts have repeatedly insisted in the said requirement by the trial court to clearly stipulate or explained the elements that constitute the offence charged of where there is a likely hood of pleading guilty by the accused, more so in a situation where the accused have no legal representation. (lay person). In the case of **Buhimila Mapembe vrs R [1988] TLR 175** the court held and I quote. *"In any case in which a conviction is likely to proceed on a plea of guilty, it is most desirable not only that every constituent of a charge should be explained to the accused but he should be required to admit or deny every element of it unequivocally"*. I should further add that it was very necessary in the case at hand as the accused denied the charge when first appeared before the court

on 6/10/2016 but later on 20/10/2016 alleged to have admitted to their commission. In the case of **Adon vrs R [1973] EA 445 – the Court of Appeal for Eastern Africa** in insistence of reading over the statements of facts to the accused before entering a plea of guilty has this to say and I wish quote

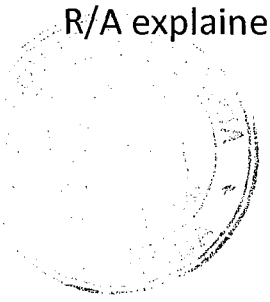
> *"the statement of facts serves two purposes, it enables the magistrate to satisfy himself that the plea of guilty was really unequivocal and that the accused has no defense and it gives the magistrate the basic material on which to assess the sentence. It frequently happens that an accused, after hearing the statement of facts, disputes some particulars of fact or alleges some additional fact, showing that he did not really understand the position when he pleaded guilty. It is for this reason that it is essential for the statement of facts to precede the conviction".*

In the case at hand, though the facts were prepared by the court, but the record are silent as to whether they were read to accused which raises doubts that they were actually read to the accused. Legally in case of doubts, the same are to be resolved in favor of the accused. I am thus inclined to concede and join hands with the State Attorney's argument that the first and second grounds of appeal have merits. The Appellants have prayed the court apart from allowing their appeal to further order their release from prison. However the State Attorney on his part has prayed the court to order *tri – denovo* so that the accused can enter their plea.

The issue to resolve is what is the proper remedy in the circumstances of this case. I am aware that the Appellants have raised seven grounds of appeal. However the two first grounds which the court has found them to be meritorious suffice to dispose of this appeal considering the fact that the pointed out anomaly has occurred at the very beginning of the proceedings (plea stage). Closer look of the other grounds of appeal entails analysis of the evidence which wasn't adduced following the alleged plea of guilty by the Appellants (accused therein). In those circumstances therefore, the proper remedy is re – trial so as to afford an opportunity to the Appellants to plead afresh. I thus order *tri denovo* from the P.H. stage before another Magistrate. Having in mind that this is a long time case, the *re –trial* is ordered to be conducted within a year. I further order the case file be reverted to the trial court for it to proceed from the P.H. stage.

It is so ordered.

R/A explained.



L.G. Kairo

Judge

At Bukoba

03/05/2018