

**IN THE HIGH COURT OF TANZANIA  
(DAR ES SALAAM DISTRICT REGISTRY)  
AT DAR ES SALAAM**

**CRIMINAL APPEAL NO. 14 OF 2020**

*(Appeal from the Judgment and Orders of the District Court of Ulanga at Mahenge (Hon. M. R. Masimbi, RM) in Criminal Case No. 116 of 2019 dated 5<sup>th</sup> September, 2019.)*

**ISSA JUMA @ ABDALLAH ..... APPELLANT**

**VERSUS**

**REPUBLIC ..... RESPONDENT**

*Date of last Order: 30/03/2020*

*Date of Judgment: 18/05/2020*

**J U D G M E N T**

**MGONYA, J.**

Aggrieved by the decision of Ulanga **District Court in Criminal Case No. 116/2019** the Appellant in this matter sought for an appeal before this Honorable Court with two grounds of appeal against the conviction and sentence, as herein below: -

- 1. That the plea of guilty was equivocal/irregular since the charge sheet did not contain all provisions of punishment provided in the sentence.***

***2. That, part of the sentence imposed on the accused is unjustifiable and irregular.***

The matter before this Honorable Court had the audience of the Appellant being represented by Mr. Bavoo Junus learned Advocate and the Republic was represented by Ms Faraja George learned State Attorney.

When the matter came for hearing, the Court ordered the matter be disposed of by way of written submissions.

Submitting for both grounds of appeal, the Appellant's learned Counsel informed the court that, on **04/09/2019** the Appellant (who had been engaged as tractor driver) was contracted by another person (the customer) to plough his farm which was situated at Malinyi. While on way to the customer's farm, the Appellant and the customer were stopped by a group of unknown villagers who told them that they have entered a game reserve, and that unless they run away for their lives, they will be apprehended and killed by game wardens.

It was the averment of the learned Counsel that out of fear, the Appellant switched off the tractor and ran away to hide in the nearby bush. The customer also fled on his way. Soon thereafter, the game wardens arrived and took the tractor to Malinyi Police Station.

Moreover, later on the Appellant got out of the bush and contacted the owner of the tractor to tell him what happened. The next day, the Appellant, being in the company of the owner, went to the Malinyi Police Station and surrendered himself.

Mr. Junus Advocate averred that on the **05/09/2019** the Appellant was arraigned before the District Court of Ulanga at Mahenge in **Criminal Case No. 116 of 2019** and was charged for an offence of unlawful entering in a game reserve contrary to ***section 15(1) and (2) the Wildlife Conservation Act No. 05 of 2009.***

It was further submitted that, the case was heard and determined on the same day, whereby the Appellant was convicted and sentenced to pay fine of **Tshs. 250,000/=** or, in case he defaults, to serve a one-year imprisonment. In addition to the sentence the District Court ordered for **confiscation** of Tractor make John Deer with Reg. T990 DLG to the Government of United Republic of Tanzania.

The Counsel submitted that, it is a well-established principle under ***section 360(1) of the Criminal Procedure Act [Cap. 20. R.E. 2019]***, that an appeal which emanates from a plea of guilty of an accused person must be disallowed except as to the extent or legality of the sentence.

Moreover, a close look at the provisions of **section 15 of the Wild Life Conservation Act No. 5 of 2009**, clearly indicates the nature of the offence as well as its specific penalty, specifically, **section 15 of the Wildlife Conservation Act (supra)** provides for punishment of fine or imprisonment or both fine and imprisonment. The said section does not say anything about **confiscation**. This means that, the order of confiscation of the tractor issued by the trial court had no any legal backup. From the trial court's records, it is unclear as to whether the confiscation of the tractor was ordered as a result of the request from the prosecution, or it was the trial court which ordered it *suo motto*.

The Counsel for the Appellant submitted that, the charge sheet ought to contain the specific section which provide for the confiscation of the tractor. Alternatively, if the trial court exercised that mandate *suo motto*, then the trial Magistrate ought to have clearly indicated the specific provision of law under which he or she derived the mandate to confiscate the tractor.

The Counsel for the Appellant further pointed out the so called another confusion from the particular of the offence in the Appellant's charge sheet. He said, it has been alleged that the Appellant did not only enter the Kilombero Game Controlled Area, but also he cultivate by using tractor with Reg. T995 make John

Deer without permission. It is very unfortunate that **section 15 of the Wildlife Conservation Act** does not say anything about cultivation, and the said section only talks about entering a game reserve. If the intention of the prosecution was to charge the accused with cultivation, then the offence ought to have been pegged under **section 20(1) (c) of the Wildlife Conservation Act** which creates an offence of cultivating in the game reserve.

It is from such confusion, Mr. Junus learned Counsel states that the charged mixed two separates offences in the same count which amounts to duplicity. As the result, it is crystal clear that the charge was incurably defective.

In reply to the submission by Counsel for the Appellant, Ms. Faraja for the Republic averred that; they have gone through the grounds of appeal and it is their stand that the plea was equivocal and hence support the appeal.

Further the learned State Attorney, stated the reasons for supporting the appeal being through the record at page 1 of the proceedings the Appellant's plea of **"it is true"**, could not be a plea of guilty since it is imperfect and unfinished.

The learned State Attorney averred that, it is proper that procedure on plea of guilty for the Accused to admit, to have all essential elements of the offence for the trial Magistrate to enter

plea of guilty. This procedure is well stated in the case of ***KHALID ATHUMANI VS THE REPUBLIC CRIMINAL, Criminal Appeal No. 103 of 2005 in citing the case of ADAN VS REPUBLIC (1973) EA 445.***

It is the State Attorney's submission that the plea does not contain essential ingredient of the offence charged, hence it is imperfect and unfinished. Thus it could be held equivocal as provided in the case of ***LAURENCE MPINGA REPUBLIC [1983] TLR 166***, where by one of the reasons a plea can be held equivocal is when a plea is imperfect, ambiguous or unfinished.

It is further Ms. Faraja's submission that the plea could have been unequivocal if the accused would have stated the words that amount to the admission of all essential ingredient of offence as directed in the case of ***KHALID ATHUMANI VS REPUBLIC (supra)*** where the Court held the Appellant's plea was equivocal and dismissed the appeal.

It was the State Attorneys submission that upon the given reasons, Respondent's State Attorney humbly argued this honorable Court quash the entire proceedings of the trial court, quash conviction and set aside the sentence. Further, it is the Respondent's hesitation to pray for a retrial hence the charge sheet was defective.

Having gone through the lower courts' records, the grounds of appeal and the submission by the parties, it is from here that I take the chance to determine the appeal at hand. I have noted the contention of the Appellant and that of the Respondent which has conceded to the appeal.

It is a matter of practice and procedure that when an accused person is arraigned before the Court for trial as charged with an offence that Magistrate/ Judge has jurisdiction to try, the first prerequisite is to ask him to plead to such charge. It is the procedure where a charge is read over and explained to the accused and explained to the accused in the language he understands and ask him whether he admits or denies the charge, the Accused's' answer to the charge is what is called the plea.

The plea of the accused is required to be recorded in the file in the nearest as possible in his own words, especially when he admits the charge. In the appeal at hand the accused person plea that appear in the record is **"it is true"**. The plea did not further state as to what extent the facts of the offence he is charged with are true.

The charge whatsoever is also not properly framed hence raising a confusion of what was the appellant really charged with. What is the exact offence that the Republic intended to charge the

appellant with? The charge carries in it an offence which is distinguished by the provision that established the offence as argued by the Appellant in his submission hence disqualifying the plea as it stands uncertain as to what the Appellant has really pleaded to.

In the case of ***SALI LILO V. REPUBLIC, Criminal Appeal No. 431 of 2013 (CAT)***, The High Court of Tanzania at Tabora convicted and sentenced the Appellant of murder, contrary to ***Section 196 of the Penal Code, Cap. 16 [R.E. 2002]***. At the Court of Appeal, one of the grievances was that the charge sheet was defective as it was not prepared in compliance with ***sections 132 and 135 of the Criminal Procedure Act***, because the particulars of the charge sheet offended the prescribed form in the Second Schedule to the Act, the court held that:

***"We take this opportunity to remind the trial courts to take note of the observation made in the case of Mohamed Kaningo VR. [1980] TLR 279 that: "While it is the duty of the prosecution to file charges correctly, those presiding over criminal trials should, at the commencement of the hearing, make it a habit of perusing the charge as matter of routine to satisfy themselves that the charge is laid correctly, and if not***



***to require that it be amended accordingly "quoting from Mohamed Kaningo V. Republic [1980] T. L. R. 279."***

The essence of properly drafted charges by those drafting the charges still matter and was also insisted again in the case of ***ISDORI PATRICE V. REPUBLIC, Criminal Appeal No. 224 of 2007 (CAT)*** where the Court held that:

***"It is a mandatory statutory requirement that every charge in a subordinate court shall contain not only a statement of the specific offence with which the accused is charged but such particulars as may be necessary for giving reasonable information as to the nature of the offence charged "Citing section 132 of the Criminal Procedure Act".***

The above principles laid down by the court are all in line to direct that an accused person has a right to understand plainly what he is charged for and understand full of the same so as to enable the accused have a fair trial. This was reflected in the case of ***MNAZI PHILIMON V. REPUBLIC, Criminal Appeal No. 401 of 2015 (CAT)***; it was held that:

***"It is now beyond controversy that one of the principles of fair trial in our system of criminal justice***

***is that an accused person must know the nature of the case facing him, and this can only be achieved if the charge discloses the essential elements of the offence”.***

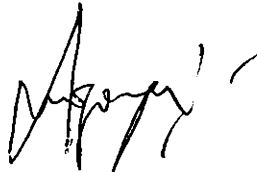
Therefore, an accused person being found guilty on a defective charge, based on wrong and/or no-existent provisions of the law, it cannot be said that the Appellant was fairly tried. This fact was also reiterated in the case of ***ABDALLAH ALLY V. R. Criminal Appeal No. 253 of 2013 (Unreported)***, where the Court went further in stating that they wish to remind the Magistrate that it is a salutary rule that no charge should be put to an accused before the Magistrate is satisfied, inter alia, that it discloses an offence known to law. It is intolerable that a person should be subjected to the rigours of a trial based on a charge which in law is no charge.

From the above reasoning and the principles established in law and cases above, **I accordingly allow the Appeal and proceed to quash the entire proceedings of the trial court and set aside the conviction and sentence thereto.**

Further from the above, **I order the return of the confiscated tractor to the Appellant with immediate effect.**

It is so ordered.

Right of Appeal Explained.



**L. E. MGONYA**

**JUDGE**

**18/05/2020**

Judgment Delivered under my hand and seal of the court. This 18<sup>th</sup> May 2020 in Chambers, in the presence of Ms. Janet Magoho State Attorney and Ms. Janet RMA; and in the absence of the Appellant.



**L. E. MGONYA**

**JUDGE**

**18/05/2020**