

IN THE HIGH COURT OF TANZANIA

MUSOMA DISTRICT REGISTRY

AT MUSOMA

CRIMINAL APPEAL NO 60 OF 2020

CHACHA S/O MAKONGE @ MWANSI _____ APPELLANT

VERSUS

THE REPUBLIC _____ RESPONDENT

(Arising from the decision and orders of the district court of Serengeti at Mugumu, Hon. Semkiwa RM in criminal case no 21 of 2020 dated 27.02.2020)

JUDGEMENT

Dates; 11th August & 25th September 2020

GALEBA, J.

At about 2.00 am in the night of 12.01.2020, at Masangura village within Serengeti district in Mara region, **MR. MAKONGE MWANSI**, a 74 year old man, while asleep with his wife **GHATI KOBOKO** had the front door of their house forcefully broken by robbers, thereby achieving entry into the house. The robbers happened to be their own sons, **MR. CHACHA MAKONGE MWANSI** and his elder brother **MR. JUMA MAKONGE MWANSI**. According to the prosecution, **MR. CHACHA MWANSI**, was armed with a machete with which he used to threaten his father and forcing him to give him money. The father resisted the son's illicit demand and that is when **MR. CHACHA MWANSI**, using the machete cut him on his head and on the left hand. The aggressors managed to loot and escape with Tshs. 3,600,000/=, the property of their father. The two sons were



arrested, arraigned and on 17.02.2020 the duo were charged with armed robbery in the district court at Mugumu in Serengeti. In response to the charge, whereas **MR. JUMA MWANSI**, denied the charge, **MR. CHACHA MWANSI**, admitted having broken into his father's house where he cut him using a machete. He too admitted the facts constituting the offence of armed robbery. Following the admission, the district court convicted him and sentenced him to 30 years imprisonment, leaving his elder brother's trial pending in that court.

MR. CHACHA MWANSI, was aggrieved with those orders hence this appeal in which he raised the following 5 grounds of complaint in his petition of appeal; *firstly* that the trial magistrate erred for convicting him without asking him more than three times whether he admitted the charge or not. *Secondly* he complained that the trial magistrate offended the Law of the Child Act when it punished him with imprisonment without considering his age because at the time of committing the offence he had not attained 18 years. *Thirdly* that the trial court erred because, it did not satisfy itself whether the appellant committed the offence with malice or intention to commit it. *Fourthly* the court did not observe the principles of natural justice as it was too biased and *fifthly*, the trial court convicted the appellant unheard and that abused his right to be heard.

In this appeal the issue, that presents itself bare for determination is whether the appellant was accorded a fair trial. This issue will be resolved in the context of the grounds of appeal raised.



When this appeal came up for hearing on 11.08.2020, **MR. CHACHA MWANSI**, prayed to adopt his grounds as his submissions but had a brief submission to add. He submitted that it is true that he admitted to have committed the robbery but it is because he was coerced by the police into admitting the offence. On my inquiry, he submitted that he was tortured at the police and was told that when he gets to court he has to admit the offence. He added that while in court he was not threatened or forced by anybody to admit the robbery.

As for the 1st ground of appeal, Mr. Frank Nchanila learned state attorney who was appearing for the republic, submitted that there is no legal requirement to ask the accused person more than three times when he admits to have committed an offence. He submitted that what is necessary is for the court to read the charge in the language that the accused understands. He cited the case of **Halid Athuman versus Republic** Criminal Appeal no 103 of 2005 Court of Appeal (Unreported) in supporting his argument.

In respect of this ground, I am aware of no procedural requirement that compels courts to read charge sheets three times or more before the court can record the accused person's response. In the circumstances I am in agreement with Mr. Nchanila that the 1st ground of appeal has no merit.

As for the 2nd ground of appeal, where MR. CHACHA MWANSI was complaining that the court did not determine his age because at the time the offence was allegedly committed he was below 18

years, Mr. Nchanila submitted that the issue of years was part of the charge which contained facts which **MR. MWANSI** admitted unequivocally. He submitted that the complaint was an afterthought.

In respect of this ground, I fully agree with the submissions of Mr. Nchanila because, *first*, **MR. MWANSI** did not raise any issue with the charge or with any facts when they were read over to him. *Secondly*, any matter relating to age was not raised or determined by the district court. It is now an established rule that a matter not dealt by the trial court cannot be complained upon by way of appeal see **Hassan Bundala Swaga versus the Republic** Criminal Appeal No 416 of 2014 CA (unreported). *Thirdly* as **MR. MWANSI** admitted the charge, the only aspect upon which he can appeal, is the legality of the sentence but not any other matters see **section 360(1) of the Criminal Procedure Act [Cap 20 RE 2019]** (the CPA), which provides that;

"360(1) (1) 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."

In the circumstances, I find that the complaint that the appellant was a child at the time he committed the offence an afterthought and the same has no merit.

In respect of the 3rd, 4th and 5th grounds of appeal which are complaints that the prosecution failed to prove malice and also that **MR. CHACHA MWANSI** was denied a right to be heard and the district court was very biased, Mr. Nchanila submitted that,



after **MR. CHACHA MWANSI** had pleaded guilty, there was no need to prove any aspect of the prosecution case. He added that the plea was unequivocal and there cannot be any appeal against any aspect of the case as per section **360(1)** of the CPA quoted above.

In respect of these grounds (grounds 3, 4 and 5), I am at one with Mr. Nchanila, when the charge was read over to him, at page 2 of the typed proceedings, **MR. CHACHA MWANSI**, replied thus;

"Ni kweli nilimvamia baba na nilimkata na panga"

Then the court entered a plea of guilt and the prosecution read all the facts constituting the offence at pages 2 and 3 of the typed proceedings to which the appellant further responded;

"Ni kweli maelezo yako sawa ninayakubali"

Thereafter **MR. CHACHA MWANSI** signed the memorandum of matters not in dispute which essentially were all the matters that constituted the robbery. In this court **MR. CHACHA MWANSI** submitted that he admitted to have committed the offence because he had been threatened by the police who told him that he should admit the criminality. This argument is neither here nor there. **First** he did not tell the court which policeman threatened him, assuming that there were any threats and **secondly**, he submitted in court that when he was admitting the guilty in court there was no police who forced him to admit.

I am firm in my decision that, the district court did not offend any principle or any procedure that led to violation or abuse of the



appellant's right to be heard. There was nothing suggesting any biasness on the part of the magistrate who heard the case.

As for the sentence, the principle of law is that an appellate court cannot interfere with the sentence of the trial court unless such sentence is manifestly excessive or inadequate, or where the trial court acts on a wrong principle or takes into account irrelevant matters see **Selemani Makumba versus the Republic [2006] TLR 379.**

In this case the punishment for armed robbery is 30 years imprisonment as per section 287A of the **Penal Code [Cap 16 RE 2019]** which means there is no lesser punishment that the district court would have awarded, other than that. Based on the above reasons, the 3rd, 4th and 5th grounds of appeal are hereby dismissed.

Finally as all grounds of appeal have been found to have no merit, this appeal is dismissed and the appellant has a right of appealing to the Court of Appeal of Tanzania.

DATED at MUSOMA this 25th September 2020




Z. N. Galeba
JUDGE
25.09.2020

Court; This judgment has been delivered today the 25th September 2020 in the absence of parties.

Orders;

1. The respondent may collect his copy of the judgment from the judgment collection desk at the reception here at the High Court building in Musoma.
2. The registry office at the High Court must as soon as practicable ensure delivery of this judgment to Mugumu Prison or to any prison facility where **MR. CHACHA MAKONGE MWANSI**, may be held presently for him to take appropriate steps like appeal.
3. The registry office at the High Court must as soon as practicable ensure delivery of the original record of criminal case no. 21 of 2020 to the district court of Serengeti for continuation of trial of **MR. JUMA MAKONGE MWANSI** the elder brother of the appellant.



Z. N. Galeba
JUDGE
25.09.2020