

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

CRIMINAL APPEAL No. 163 of 2019

(Originating from a decision of the Court of Resident Magistrate of Dar Es Salaam at Kisutu in Economic Case No. 32 of 2018)

REVOCATUS MUGISHA

CALVIN PONELA

ROBERT MKINI

.....APPELLANTS

Versus

THE REPUBLIC.....RESPONDENT

JUDGEMENT

10.02.2020 - 18.03.2020

J. A. DE-MELLO J;

Before the **Resident Magistrate Court of Dar Es Salaam at Kisutu**, **seven (7)** accused persons, including the Appellants, were charged and convicted on their own "**Plea of Guilty**", to pay fine of **TShs. 500,000/=** each.

Aggrieved the Appellants appealed before this Court with **four (4) grounds** as hereunder;

- 1. The Trial Court erred in law to convict the Appellants on a defective charge which does not disclose any offence known in law.**
- 2. The Trial Court erred in law and, fact to convict the Appellants on facts which do not establish any offence in law.**
- 3. The Trial Court erred in law and, fact to convict the Appellants on equivocal and involuntary plea.**
- 4. The Trial Court erred in law to convict the Appellants without jurisdiction.**

Written submissions was preferred and which the Court ordered on the **10.02.2020** and, both Parties were duly represented and in compliance.

For the sake of serving time and considering the two rival submissions from parties, it is evident that the Appellants did in as far as record from the Trial Court proceedings page...pleaded guilty. Looking at the ground of three (3) this is quite clear of which the three other grounds corroborating how illegal that plea had been reached. The general principle of law however, the law under **section 360(1) of CPA Cap. 20** states;

"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."

The Applicant notwithstanding the above law have opted for an Appeal and which leads the Court to look into the grounds to ascertain whether it justifies the Court's consideration. In the case of **Adan vs. R (1973), E.A 445** at

page 446 the following were court outlined as steps to be followed when entering a Plea of Guilty;

- 1. The charge and all the ingredients of the offence should be explained to the accused in his language or in a language he understands.**
- 2. The accused's own words should be recorded and, if they are an admission, a plea of guilty should be recorded.**
- 3. The prosecution should then immediately state the facts and, the accused should be given an opportunity to dispute or explain the facts or to add any relevant facts.**
- 4. If the accused admits the truth of the charge, his admission shall be recorded as nearly as possible in the words he uses and the judge shall convict him and pass sentence upon or make an order against him, unless there appear to be sufficient cause to the contrary.**
- 5. If the accused does not agree with the fact or raises any question of his guilty, his reply must be recorded and change of plea entered.**
- 6. If there is no change of plea, a conviction should be recorded and a statement of facts relevant to sentence together with the accused's reply should be recorded.**

It is **Counsel Vitalis** submissions that much as **section 360(1)** of **CPA** bars an Appeal against conviction founded on a plea of guilty, the said general rule is with no exception depending on factors as highlighted in the grounds of Appeal. He is of a firm view that the plea recorded was ambiguous

or unfinished, but even worse, entered as a result of mistake or misapprehension, the charge itself defective not matched with facts adduced by the prosecution in support of essential elements of the offence in which the Appellant ignorantly pleaded guilty. He referred, **Lawrence Mpinga vs. R [1983] TLR 166, Msafiri Mganga vs. R. Criminal Appeal No. 57 of 2012 page 3** and, **Said Omari Kombo vs. R [2000] TLR 315.**

Replying to the submissions the learned State Counsel insisted that the Appellant's plea of guilty was unequivocal with no shortfalls and which the Trial Court found itself justified in recording conviction based on the same. I need not repeat the **Plea of Guilty** that was recorded and one which is now contentious before this Court. In view of appreciating the issue before us, it is significant to critically peruse what transpired before the Trial Court. In their own words the Appellant towards the charge of **Making False Statements for Purposes of Obtaining Residence Permits, c/s 45 (1) (b) Immigration Act Cap. 54 RE 2002** as well as facts constituting read over to them had the following **PLEAS;**

5th Accused: I admit to the produced facts, they are correct and, true.

6th Accused: I do agree with the facts, they are true and, correct.

7th Accused: I do agree with the produced facts they are correct and true.

You will agree with me that the Trial Magistrate did comply with the guidelines above in leading the Appellants to their **PLEAS**. The allegations by the Appellants seems an after-thought as it is clear the **PLEA** were equivocal. In the case **Issa Ramadhan vs. Republic Criminal Appeal**

No. 4 of 2017 the Court of Appeal quoted the findings in the case of **Adam vs Republic [1973]**, where it was held that:

"Where a person is charged, the charge and the particulars should be read out to him so far as possible in his own language, but if that is not possible, then in a language which he can speak and understand. The Magistrate should then explain to the accused person all the essential ingredients of the offence charged. If the accused then admits all those essential elements, the magistrate should record what the accused has said as nearly as possible in his own words and then formally enter the plea of guilty.

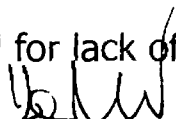
The Magistrate should next ask the prosecutor to state the facts of the alleged offence and, when the statement is complete, should give the accused person an opportunity to dispute or explain the facts or to add any relevant facts. If the accused person does not agree with the statement of facts, or asserts additional which if true, might raise a question as to his guilty, the magistrate should record a change of plea to "not guilty" and proceed to hold a trial. If the accused person does not deny the alleged facts in any material respect, the magistrate should record a conviction and proceed to hear any further facts relevant to sentence. The statement of facts and the accused's reply must, of course, be recorded."

It is trite law that, **'there should be the end of litigation'** and in the light of the above authority, of a firm view that, the Appellants understood well

the charge which stood facing them, and, that, is why even after the facts had been read in detail by the prosecutor, they still maintained it to be all correct and true. This after-thought is nothing but abuse of Court process and Court should not be seen to condone.

Now, it is a settled law under **section 360 (1)** of **CPA** that, Appellant can only have a room of Appeal towards the legality of the sentence imposed by the Trial Court, if at all. I find no basis to address the remaining grounds of Appeal following the substantive to be unmerited and, which disposes them all. The Appeal is hereby dismissed for lack of merit and, it is so ordered.




J.A. DE-MELLO

JUDGE

18.03.2020