IN THE HIGH COURT OF TANZANIA

(IN THE DISTRICT REGISTRY)

AT MWANZA

HC.CRIMINAL APPEAL NO. 155 of 2019

(Appeal against the decision of the District Court of Bukombe at Bukombe in Criminal Case No. 78 of 2018)

PAUL S/O PASCHAL ..... APPELLANT

VERSUS

THE REPUBLIC ..... RESPONDENT

JUDGMENT

Last order: 25.03.2020

Judgment date: 02.04.2020

A.Z. MGEYEKWA, J

The appellant, PAUL S/O PASCHAL was convicted on his own plea of guilty in Criminal Case No. 78 of 2019 in the District Court of Bukombe. The appellant stand charged with two offences; Burglary contrary to section 294 (1) of the Penal Code Cap. 16 [R.E 2019]. The prosecution alleged that on 6th October, 2017 at 12:00 hrs at Lugunga Village within Mbogwa District in Geita Region did break into the dwelling house of one Kilian S/O Emmanuel with an intention to commit an offence therein.

On 2nd count; the prosecution alleged that on 6th October, 2017 at 12:00 hrs at Lugunga Village within Mbogwa District in Geita Region did steal one sofa set valued at Tshs. 200,000/= and various domestic properties valued Tshs. 400,000/= all properties make a total value off Tshs. 600,000/= the properties of Kilian S/O Emmanuel.

The trial Magistrate was satisfied that the plea of the appellant was unequivocal and that the facts constitute the offence as charged. He was convicted on his own plea of guilty and for the 1st count he was sentenced to serve six years imprisonment and for the 2nd count he was sentenced to serve seven years imprisonment, the sentences to run concurrently.

At the hearing, the appellant appeared in person unrepresented; whereas the respondent Republic was represented by Ms. Fyregete, learned Senior State Attorney who resisted the appeal.

The appellant has raised six grounds in his petition of appeal which can be summarized as follows; **One**, the trial Magistrate erred in law and fact to convict the appellant based on an equivocal plea of guilt. **Two**, the trial Magistrate erred in law and facts to convict the appellant without considering that the facts which were read over to the appellant were made under irregularity procedure as it is not shown on the record that the facts which were admitted and disputed. **Three**, the trial Magistrate erred in law and facts for failure to afford the appellant right to plea after the facts were read over by the prosecutor. **Four**, the proceedings were defective for failure to mention a proper section which when entering conviction against the appellant. **Five**, that the charge was

not read over in a language that is understandable by the appellant. **Six**, the trial Magistrate convicted the appellant without considering his age that he is 15 years.

The appellant had not much, he said that he has filed his grounds of appeal and he has no additional grounds.

Ms. Fyregete submitted that the appellant was convicted on two counts; burglary and stealing contrary to section 294 (1), section 258 and 265 of the Penal Code Cap.16 [R.E 2019]. The learned State Attorney stated that after reading over the charge the accused admitted to have committed the offence and the public prosecutor read over the facts which dispose the offence that he broke and stole the properties of one Emmanuel.

She continued to submit that the facts were read over, disclosed the ingredients of the offence. She stated that on 2nd count; theft must be made fraudulent and capable of being stolen as per section 264 (1) of the Penal Code Cap.16 [R.E 2019]. It is evident that he broke into a building. Ms. Fyerete refuted that the appellant is 15 years old because the age of the appellant is mentioned in the charge sheet that he is 18 years old and when the charge was read over he admitted.

Submitting for the third ground of appeal which relates to sentencing, Ms. Fyeregete submitted that the appellant was sentenced to serve 7 years and burglary offence is subjected to 20 years imprisonment as per section 294 (2) of the Penal Code Cap. 16 [2019] which falls under a minimum sentence, in accordance with section 170 (1) (a) of the Criminal Procedure Act, Cap.20 [R.E

2019] whereas the subordinate court can issue an alternative sentence. She submitted further that the subordinate courts are authorized to give a sentence of not acceding 5 years, but as per the court records the appellant was convicted for 6 and 7 years imprisonments. She stated that the sentence was illegal thus she ended supporting the appellant's appeal regarding the sentence. She continued to submit that the Resident Magistrate in accordance with section 170 of the CPA is allowed to increase a higher sentence after obtaining consent from the High Court, therefore, in the present case the Resident Magistrate was not authorized to issue a higher sentence of 7 years, therefore, the sentence was given out of her jurisdiction. She concluded by stating that she leaves it to the court to quash the sentence and order a proper sentence.

The appellant had nothing to rejoin.

I find it appropriate to travel through the record and see what transpired in the District Court of Bukombe. On the 12th April, 2017 when the charge was read over and explained to the appellant who was asked to plead thereto the appellant pleaded as follows:-

1st count: It is true I broke the house of Kilian with intent to steal.

2nd count: Ni kwell tulikuwa wawili tukaiba.

The trial District Resident Magistrate entered a plea of guilty to the charge. The record of appeal shows that after the appellant pleaded guilty, he was convicted on his own unequivocal plea of guilty. It is settled law that unequivocal plea is not appealable since the appellant cannot complain about the conviction. However, on the other hand, considering the plea as such, the court may find the plea was ambiguous or that it was taken under mistake or

misapprehension and if either of these circumstances had been revealed, the Court may allow on appeal the accused to challenge the conviction on a plea of guilty.

I have found that the facts were read over to the appellant and records reveal that the appellant admitted the facts that they are true. The same is produced hereunder:-

Accused: I admit all facts as stated by the prosecutor to be true.
Thereafter both parties appended their signatures.

COURT: The accused person has pleaded guilty to the offence with which he is charged with and he has admitted all facts as stated by the prosecution to be true.

Thereafter, the trial court convicted the appellant on its own plea of guilty and sentenced him for the 1st count to serve 6 years imprisonment and for the 2nd count to serve 7 years imprisonment.

The circumstance in which an accused person was convicted on his own plea of guilty was set out by Samatta, J (as he then was), in the case of **Laurent Mpinga v. Republic** (1983) TLR 166 the High Court (Samatta, J. as he then was) had to consider circumstances in which a person convicted on his own plea of guilty he may appeal to challenge the conviction. I fully subscribe to the principle enunciated in the **Laurent Mpinga** (supra) case since in the present case the appellant plea of guilty was equivocal. Therefore, I have found that the Preliminary hearing was conducted fairly and the accused was

convicted based on his own plea of guilty.

Concerning the sentence imposed to the appellant, I am in accord with Ms. Fyeregete submission that the trial Magistrate had to obtain permission before issuing the said sentences which were above the minimum sentence stated by the law. Section 170 (1),(a), and (2),(a) of the Criminal Procedure Act Cap. 20 [R.E 2019] provides that:-

> *" 170 (1) the subordinate court may, in a case in which such sentences are authorized by law, pass the following sentences*
>
> *(a) imprisonment for a term not exceeding five years, save that where a court convicts a person for a scheduled offence, it may if such sentence is authorized by law, pass a sentence of imprisonment for such offence for a term not exceeding eighty years."*

Based on the above section 170 (1) (a) of the Criminal Procedure Act, Cap. 20 [2019] the exceeding sentence shall not be carried into effect or executed until the record of the case or certified copy of it has been transmitted to the High Court and a Judge has confirmed the sentence or order. In the instant case, the trial Magistrate was not a Senior Magistrate, thus, she was not authorized to impose a sentence exceeding five years imprisonment. For these reasons I have found that the sentence issued was unfair and contrary to the law.

In as much as I have found that both sentences are defective to the extent explained above, the conviction is accordingly set aside, considering the

age of the appellant's, the sentence is hereby reduced to 16 months imprisonment for each count and the sentenced to run concurrently. As a result, the appellant has accomplished his sentence. Therefore, I order for his immediate release from the prison unless he is lawfully held.

Order accordingly.

DATED at Mwanza this 02nd day of April, 2020.

A.Z Mgeyekwa

JUDGE

02.04.2020

Judgment delivered on 02nd day of April, 2020 in the presence of the appellant and Ms. Fyeregete, the learned Senior State Attorney.

A.Z Mgeyekwa

JUDGE

29.04.2019