

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE DISTRICT REGISTRY OF KIGOMA)**

AT KIGOMA

(APPELLATE JURISDICTION)

(DC) CRIMINAL APPEAL NO. 49 OF 2020

(Original Criminal Case No. 87 of 2020 of the District Court of Kigoma before Hon. K.V.
Mwakitalu - RM)

ANTHONY S/O GIDION.....APPELLANT

VERSUS

REPUBLIC..... RESPONDENT

J U D G M E N T

15th & 24th February, 2021

I.C. MUGETA, J.

The brief facts of this case are that the appellant was arraigned at the trial court charged with the offence of armed robbery contrary to section 287A of the Penal Code [Cap. 16 R.E. 2019]. This was on 4/8/2020. He pleaded not guilty to the charge and the case was adjourned to 7/8/2020 for preliminary hearing. On 7/8/2020, the case was adjourned to 21/8/2020 because facts of the case were not ready. Several adjournments, for different reasons, followed till on 5/9/2020 when preliminary hearing was conducted. Again, when the charge was read over and explained to him, the appellant entered a plea of not guilty. Then facts were adduced to which

Mgeta

he admitted as constituting true facts of what transpired. The learned magistrate was satisfied that the admitted facts proved the ingredients of the offence charged. On that account, he directed the charge to be read again to the appellant. This time, he pleaded guilty. Consequently, he was convicted of his own plea of guilty and the mandatory thirty years imprisonment was imposed on him. Aggrieved by both conviction and sentence, he has appealed to this court on three grounds of appeal, namely;

- i. That, the trial resident magistrate erred in law and in fact on convicting the appellant relying on equivocal plea of guilty which resulted from a mistake or misapprehension.*
- ii. That, the trial resident magistrate erred in law and fact in failure to take into consideration the facts, the appellant plea was imperfect, ambiguous (sic) and unfinished.*
- iii. That the entire proceedings was marred by the procedural irregularities fatal. Hence, there is miscarriage of justice.*

Before me, he failed to present anything useful in relation to the above grounds of appeal. In lieu thereof, he adduced facts which were supposed to constitute his defence if the case proceeded to trial. Edna Makala, learned State Attorney for the Republic, supported the appeal for a reason that considering how events leading to the plea of guilty unfolded, that plea

cannot be said to be unequivocal. She agreed with the argument in the first ground of appeal that the plea of guilty was influenced by a misapprehension of facts. I cannot agree more with this submission. A plea of guilty that results from facts and not a plea to the charge more often than not is likely to be influenced by a misapprehension of facts. Had the appellant intended to plead guilty, he would have done so from the first day of his arraignment. It is my view that change of a plea from not guilty to guilty ought to be treated somewhat with circumspection. Therefore, as a matter of practice and prudence such changes should not be lightly accepted without ascertaining the reason for the change to eliminate possibilities of misapprehension of facts.

In the event, I hold that the plea of guilty entered was equivocal incapable of sustaining a conviction. The conviction is hereby quashed and the sentence is set aside. I remit the record back to the trial court for conducting preliminary hearing and trial of the case before another magistrate. The trial to be concluded as soon as practicable.




I.C. Mugeta

Judge

24/2/2021

Court: Judgment delivered in chambers in presence of the appellant and in the presence of Miss Edna Makala for the respondent.

Sgd: I.C. Mugeta

Judge

24/2/2021