IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY
AT BUKOBA

CRIMINAL APPEAL NO. 34 OF 2021

(Originating from Criminal case 74 of 2021 of Ngara District Court)

SAMSON MSAIJA.....1ST APPELLANT
NDIHOKUBWAYO RUNDI.....2ND APPELLANT

Versus

THE REPUBLIC.....RESPONDENT

JUDGMENT

03rd June & 11th June 2021

Kilekamajenga, J.

The appellants, namely Samson s/o Masaija and Ndihokubwayo s/o Ruwi, were jointly charged with two counts i.e. unlawful entry into the National Park, contrary to **section 21 (1) (a) of the National Park Act, Cap. 282 RE 2002** and unlawful introduction of Domestic animals into the National Park contrary to **Regulation 7(1) and 20 of the National Park Regulation GN No. 50 of 2002** made under **section 25 of the National Parks Act RE 2002** read together with **Section 29 (2) of the National Parks Act Cap. 282 RE 2002**. It was alleged that, the appellants were found grazing 119 herds of cattle in the Burigi Chato National Parks at Sekeseke area within Ngara District. Before the District Court of Ngara, the appellants pleaded guilty to the two counts. During the trial, the prosecution tendered two exhibits namely, the certificate of seizure and a sketch map. Also, the prosecution invited the trial court to witness the 119

herds of cattle at Sekeseke Camp. Based on the appellants' plea of guilty, the court entered conviction. However, the 2nd appellant was conditionally discharged as he was a child below 18 years. He was required to stay for 12 months without committing any criminal offence. The 1st appellant was sentenced to pay a fine of Tshs. 200,000/= for the 1st count or serve a prison term of twelve months. The trial court further ordered the forfeiture of 119 herds of cattle to the Government under **Regulation 29(2) of the National Regulations GN. No. 50 of 2002**.

The appellants were aggrieved with the decision of the trial court hence this appeal. They approached this court for justice with three grounds of appeal coined as follows:-

1. *That, the trial court erred in law and facts, by convicting the appellants on equivocal plea of guilty.*
2. *That, the trial tribunal (sic) erred in law and facts, by failing to make the appellants herein by understanding the impact of entering a plea of guilty.*
3. *That, the tribunal (sic) erred in law and facts by explaining the charge and facts of the case hence convicting and sentence the appellants in language (sic) they does (sic) not understand hence illegal order.*

In defending the appeal, the appellants were present and enjoyed the legal services of the learned advocate, Mr. Danstan Mujaki whereas the republic was

represented by the learned State Attorney, Mr. Juma Mahona. During the oral submission, the counsel for the appellants argued the 1st and 3rd grounds of appeal and jettisoned the 2nd ground. When submitting on the 1st ground, Mr. Mujaki argued that the appellants were convicted based on an equivocal plea as they failed to appreciate the nature of the offence. He argued further that the appellants were charged with the offence of introducing 119 herds of cattle into the National Park. However, the proceedings does show whether the appellants pleaded guilty to the offence of introducing domestic animals into the National Park. He invited the court to consider the decision of the case of **Rex V. Ford [1923] 2 KB 400** which was quoted in the case of **Khalid Athuman v. R, Criminal Appeal No. 103 of 2005**.

Mr. Mujaki further argued that the appellants were not given the opportunity to explain the facts of the case hence they did not state whether they introduced cattle into the National Park. He supported the argument with the case of **Adan v. R [1973] EA 443** which was also quoted in the case of **Khalid (supra**). The counsel further argued that the appellants were charged under a non-existing law because GN. No. 5 of 2002 does not exist. Furthermore, the appellants only knew Kinyarwanda and Kirundi. Therefore, they failed to appreciate the offence in their own language as required by **section 211(1) of the Criminal Procedure Act**. The counsel was of the view that, although the law does not

specify the qualities of an interpreter, he was supposed to state his rich of knowledge in that foreign language. Also, **section 132 of the Criminal Procedure Act, Cap. 20 RE. 2019** requires the charge to specify the offence for the accused person to admit. Therefore, in line with **section 288 (2) of the Criminal Procedure Act**, the appellants did not give an unequivocal plea.

On the other hand, the learned State Attorney invited the court to the provisions of **section 360(1) of the Criminal Procedure Act** which bars an appeal originating from a decision reached after a plea of guilty. He further insisted that the plea was unequivocal because the charge was clear and pointed towards the offence of introducing domestic animals into the National Park. Under the current strand of the law, even the word "it is true" is sufficient to constitute unequivocal plea. He supported the argument with the case of **Charles Samwel Mbise v. R, Criminal Appeal No. 355 of 2019**. Also, the facts stated by the prosecution indicated the number of cattle that entered in the National Park. The prosecution tendered an exhibit in connection with 119 cattle which the appellant did not object. Instead, the appellants confirmed that the facts were correct. On the point of an interpreter, **section 211 (1) of the Criminal Procedure Act** does not require him to state the quantifications. However, in the case at hand, Mr. Meshack Muyumpu took an oath and interpreted for the appellants; they therefore pleaded to the facts they understood.

When rejoining, Mr. Mujaki stressed on the need to state the qualifications of an interpreter. Also, the appellants' explanation on the facts did not tell or specify the number of cattle.

After considering the submissions from both sides, there are three issues that need to be addressed in this appeal. **First**, the provisions of **section 360(1) of the Criminal Procedure Act,** inhibits an appeal originating from a conviction entered following a plea of guilty unless the accused seeks to challenging the length or legality of the sentence. The above section provides that:

> *360 (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.*

Second, in the instant case, the appellants did not challenge the length nor legality of the conviction but decided to challenge the appropriateness of the plea of guilty. The counsel for the appellants argued that the appellants' pleas, especially on the second count, was equivocal and therefore contrary to the law. However, the perusal of the trial court proceedings reveals the following pleas of the appellants:

> *1st count: 1st accused – It is true that I unlawfully entered into the national park without a permission from the authorized officer.*

2nd accused – It is true that I unlawfully entered into national park (sic) without a permit from the authorized officer.
2nd count – 1st accused – It is true that I unlawfully introduced domestic animals into the national park without authority
2nd accused – It is true that I unlawfully introduced domestic animals into the national park without permit.

Immediately after the above plea, the court recorded the plea of guilty. In view of the counsel for the appellant, the above plea was equivocal. Nonetheless, I wish to reiterate the principle of law governing plea of guilty. It is a well settled principle of law that, the plea must be clear, understood and should capture or address the contents of the charge. Under the old regimen of justice administration, the words 'it is true' could not alone amount to an unequivocal plea where the charge involved technical elements of the offence. It was therefore necessary for the court to explain for the elements of the offence in the language understood to the accused before he/she could offer the plea. On this point, I wish to consider the case of **Khalid Athumani v. R [2006] TLR 79** where the court stated that:

'The courts are enjoined to ensure that an accused person is convicted on his own plea where it is certain that he/she really understands the charge that has been laid at his/her door, discloses an offence known under the law and that he/she has no defence to it; A plea of guilty having been recorded a court may entertain an appeal against conviction if it appears;

that the appellant did not appreciate the nature of the charge or did not intend to admit that he was guilty of it; or that upon the admitted facts he could not in law have been convicted of the offence charged.'

However, the trend of justice administration is focusing towards the need for understanding whether or not the words 'it is true' were intended to admit the contents of the charge. Where an accused pleads 'it is true' and the facts are thereafter read and admitted, the words 'it is true' may be sufficient to constitute an unequivocal plead. The same stance was taken in the case of **Joseph Chaleani v. R [1987] TLR 107** thus:

'Appellant's plea of guilty was unequivocal because he understood well and accepted as correct the incriminating facts as narrated by the complainant.

Also, in the landmark case of **Buhimila Mapembe v. R [1988] TLR 174** the court stated that:

In any case in which a conviction is likely to proceed on a plea of guilty, it is most desirable not only that every constituent of the charge should be explained to the accused but that he should be required to admit or deny every element of it unequivocally.

The court went on stating that:

The words 'it is true' when used by an accused person may not necessarily amount to a plea of guilty, particularly where the offence is a technical

one...where the offence charged is rather technical and the accused is unrepresented, it is desirable that the technical words be adequately explained to the accused before he is asked to plead thereto.

In the recent decision of the Court of Appeal of Tanzania in the case of **Charles Samweli Mbise v. The Republic, Criminal Appeal No. 355 of 2019**, CAT at Iringa, the Court observed that:

'Once the appellant had pleaded guilty and then admitted the facts of the case disclosing all the elements of armed robbery, his plea had to be considered unequivocal. Indeed, it is settled that the applicable procedure on a plea of guilty involves no production of proof of the charge but a procedure for ascertaining if the plea is unequivocal.'

In the instant case, unlike in the above cited cases, the appellants' pleas were not confined to the words 'it is true' rather they even explained what they were admitting. In my view, their pleas, both in the two counts, dovetailed the contents of the charge. As stated above, the appellant were charged with unlawfully entering and grazing in the national park without authorization from the responsible bodies. There is no doubt, the appellants understood the contents of the charge and were able to explain beyond the mere words 'it is true'. They admitted entering and grazing in the national park; there were the key elements of the charge.

Furthermore, after the appellants' pleas, the prosecution adduced facts which information about the 119 herds of cattle. The 1st accused was recorded saying: '*I admit all facts to be true and correct. That is all.*' The 2nd accused also responded, '*I also admit all fact (sic) above to be true and correct. That is all.*' The prosecution further tendered exhibits and invited the court to witness the seizure 119 herds of cattle. The record of the trial court does not suggest that the appellants did not understand what was going on in court and at the place where the cattle were held. I find the appellants' pleas sufficient to constitute unequivocal plea and therefore this argument is devoid of merit.

Third, the counsel for the appellant argued that the person who interpreted for the appellant did not state his rich of knowledge in the foreign language (Kinyarwanda and Kirundi). To bolster his argument, the counsel cited section **211(1) of the Criminal Procedure Act**. In addressing this point, I perused the proceedings; it is evident that the appellants, who were Rwandese citizens, were offered free service of an interpreter. As the law requires, the interpreter took an oath before interpreting from Swahili to Rwandese and vice versa. **Section 211(1) of the Criminal Procedure Act** does not require the interpreter to indicate how conversant he/she is in the language. But, it is always enough to demonstrate that he knows the language that he/she is about to translate. It is unfortunate that the counsel for the appellants wants to impose

an aspect not within the preview of the above provisions of the law. The line of argument advanced by the counsel would invite the services of only professional interpreters something, if entertained, may halt proceedings involving foreigners. In addition, I am not in doubt of the rich of Rwandese language to Tanzanian living at the border of Tanzania and Rwanda. The fact that the case was tried in Ngara and the appellant were Rwandese citizens, the number to Ngara residents who converse in Kinyarwa and Kirundi is enormous. I find this argument devoid of merits too. For the reasons stated above, I find the appeal devoid of merit. I dismiss it and uphold the decision of the trial court. It is so ordered.

Dated at Bukoba this 11th June 2021.

Ntemi N. Kilekamajenga
Judge
11/06/2021

Court:

Judgment delivered this 11th June 2021 in the presence of the all the appellants and their counsel, Mr. Danstan Mujaki (Advocate) and the learned State Attorney, Mr. Juma Mahona.

Ntemi N. Kilekamajenga
Judge
11/06/2021