

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**AT SUMBAWANGA**

**DC. CRIMINAL APPEAL NO. 80 OF 2020**

*(Originating from Criminal Case No. 166 of 2018 of Mpanda District Court)*

**JUSTIN RICHARD ..... APPELLANT**

**VERSUS**

**THE REPUBLIC ..... RESPONDENT**

*Date of last Order: 14/04/2021*

*Date of Judgment: 22/06/2021*

**JUDGMENT**

**C.P. MKEHA, J**

The appellant was convicted on his own plea of guilty for the offence of stealing contrary to sections 258 (1) and 265 of the Penal Code before Mpanda District Court. It was alleged by the prosecution that, on the 24<sup>th</sup> day of May, 2018 at Kawajense Area within Mpanda Municipality in Katavi Region the appellant, did steal one motorcycle make SANLG with Registration Number MC 515BWT Value at TZS 2,200,000/= the property of one Edward Raphael. As indicated hereinabove, when the charges were read over to the accused person on 26/11/2018, he pleaded guilty to the offence charged. He thereafter admitted correctness of the facts of the case which the trial magistrate held to have sufficiently explained to the appellant, the necessary ingredients of the offence charged. A conviction was thereafter entered. He was sentenced to be imprisoned for four years. The appellant was not

satisfied. He has appealed to this court challenging both, conviction and sentence. The following are the appellant's grounds of appeal:

1. That, the formal complaint (the charge) was not made out against the appellant.
2. That, the appellant was not made properly to understand the allegations against him.
3. That, all exhibits were admitted improperly since they were not read out after their admission.

When the appellant was on the hearing date invited to argue his grounds of appeal, he merely adopted all his grounds of appeal without more.

Mr. Mwandoloma learned State Attorney resisted the appeal. The learned State Attorney submitted that, the appellant was not even supposed to appeal against conviction following his own plea of guilty to the offence charged and his admission that the facts of the case were all correct. In what seemed to be concession of the learned State Attorney to the third ground of appeal, Mr. Mwandoloma submitted that even if exhibits which were not read over to the appellant were to be expunged, still, the appellant's guilt would not be affected.

The only issue for determination is **whether the appellant's plea before the trial court was correctly considered as unequivocal, in the circumstances of this case.**

The 1<sup>st</sup> and 2<sup>nd</sup> grounds of appeal are semantically one. Upon re-reading the trial court's record one finds that the charges were properly read over to the appellant. His plea was accordingly recorded. Thereafter, adduction of facts of the case proceeded as well as admission of necessary exhibits. The appellant got time to comment on correctness of the adduced facts before entering conviction. There is no denial that, the narrated facts sufficiently explained all the necessary ingredients of the offence of theft to the appellant. The procedure to be adopted when an accused pleads guilty was substantially observed. **See: SHEHE RAMADHAN @ IDD vs. THE REPUBLIC, CRIMINAL APPEAL NO. 82 OF 2020.** For the foregoing reasons, the 1<sup>st</sup> and 2<sup>nd</sup> grounds of appeal are held to be unmeritorious. The same are accordingly dismissed.

It was the appellant's complaint in the third ground of appeal that, the contents of documentary exhibits in this case were not read out in court after admission of the same. The learned State Attorney appeared to concede that the said documentary exhibits ought to be expunged. I am not prepared to expunge the said documentary exhibits which were admitted without objection in a case whereby the appellant readily pleaded guilty to the offence charged. His plea of guilty was accompanied with admission that all the facts of the case were correct. Although the trial magistrate was not conducting Preliminary Hearing, the reasoning of the Court of Appeal in **MGONCHORI (BONCHORI) MWITA GESINE vs. THE REPUBLIC, CRIMINAL APPEAL**

**NO. 410 OF 2017**, is an authority for not expunging the documentary exhibits in this case. That said, I proceed to hold that, the third ground of appeal is as well held to be unmeritorious. The same is as well dismissed.

For the foregoing reasons and holding, the present appeal stands dismissed for want of merit.

Dated at **SUMBAWANGA** this 22<sup>nd</sup> day of June, 2021.



  
**C.P. MKEHA**  
**JUDGE**  
**22/06/2021**

**Court:** Judgment is delivered in the presence of the appellant in person and Ms. Marietha learned State Attorney.



  
**C.P. MKEHA**  
**JUDGE**  
**22/06/2021**

**Court:** Right of further Appeal to the Court of Appeal of Tanzania is explained.



  
**C.P. MKEHA**  
**JUDGE**  
**22/06/2021**