

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

TANGA DISTRICT REGISTRY

AT TANGA

CRIMINAL APPEAL NO. 8 OF 2021

(Originating from Criminal Case No. 162 of 2020 of Handeni District Court)

1. AMIRI RAMADHANI

2. MKOMWA IDDI.....APPELLANTS

-VERSUS-

THE REPUBLIC.....RESPONDENT

JUDGMENT

Date of last order: 15/07/2021

Date of judgment: 16/07/2021

AGATHO, J.:

The 1st appellant and 2nd appellant (whose charge was later dropped) were arraigned before Handeni District Court facing a charge of cattle theft c/s 228(1) and 268 (1) of the Penal Code [CAP 16 R.E. 2019]. The 1st appellant was convicted on his own plea of guilty and sentenced to five (5) years imprisonment. He was aggrieved by the conviction and the sentence entered by Hon. Veronica Siao, RM before Handeni District Court on 15/12/2020. He appealed to this Court on the following grounds:-

- 1) That the learned trial magistrate erred in law and fact by convicting 1st appellant based on plea of guilty while Prosecution failed to explain ingredients of the offences.
- 2) That the learned trial magistrate erred in law and fact by convicting the 1st appellant based on ambiguous or equivocal plea of guilty.

On the date set for hearing, the 1st appellant was present, but he also had services of Advocate Joseph Kulemba at his disposal. The Respondent was represented by Joseph Makene, State Attorney (SA).

Submitting on the 1st ground the appellant's counsel submitted that the trial magistrate misdirected herself because the case was about cattle theft whose ingredient was not explained. The 1st appellant was not given an opportunity to appreciate the nature of the charge as the Prosecution did not explain the ingredients of the offence. The Court also did not explain the nature of the charge. Therefore, the counsel submitted that the 1st appellant did not understand the nature of the charge he is facing.

The learned counsel also submitted that it is the requirement of the law that where the accused has admitted the charge, the details and ingredients of the offence should be explained to him and that was not done. This was stated in the case of **Aidan V. Republic [1973] EA No. 445** at Page 446, where the Court held that in the plea of guilty, Magistrate or Judge should ensure that the accused is informed of the ingredients of offence he is charged with.

The counsel added that since the trial magistrate did not follow that procedure she obviously misdirected herself. He prayed that the first ground of appeal be allowed, and sentence entered by Handeni District Court be set aside and the 1st appellant be set free.

The Respondent's counsel in his reply to the submissions on the grounds of appeal submitted that the appeal lacks merit in as far as the first ground of appeal is concerned. I agree with the counsel for respondent's argument that on the first ground of appeal that it lacks merit because the ingredients of the offence were explained. This can be seen on the first page of the trial court proceedings which shows that the charge was read over and explained to the accused person. On the second

page of the proceedings, it visible that the facts were read over and the provisions of Section 192 (1) Criminal Procedure Act [CAP 20 R.E. 2019] was observed. That is a guiding provision on the issue of preliminary hearing, and among other things it promotes a fair and expeditious trial. The counsel rightly submitted that the cited provision is about fair trial.

The counsel for the Respondent was also correct in his view that the case of **Aidan V. Republic [supra]** cited by the counsel for 1st appellant is not relevant in the premise of the present case because the accused was told or informed about the ingredients of the offence as stated herein above. The first ground of appeal therefore lacks merit.

Nevertheless, I find merit in the second ground of appeal in which the 1st appellant's counsel submitted that the trial Court erred in sentencing the 1st appellant basing on the ambiguous or an equivocal plea of guilty. The counsel submitted that the Court misdirected itself because the law requires that when the accused plead guilty, the same has to be recorded as the way the accused has stated. This was also held in **Mandisela Kunguru v the Republic, Criminal Appeal No. 462 of 2017**, Court of Appeal of Tanzania at Mbeya (unreported) at pages 13-14. In the case at hand, after the charge was read over the accused stated that "*it is true*".

On this point and for sake of clarity, I will paraphrase what is in the proceedings (at page 1). That during plea taking, after the charge was read over the 1st accused person (1st appellant) stated "It is true." And the 2nd accused person when asked to plead he said "It is not true." The trial court entered plea of guilty for the 1st accused and plea of not guilty for the 2nd accused. Thereafter, the Public Prosecutor (PP) read over the facts for 1st accused (as shown on pages 1-2 of the proceedings) the 1st accused said all facts are true and I admit them. He then signed, the

Public Prosecutor signed, and the trial magistrate also signed the record. The trial magistrate went on convicting the 1st accused on his own plea of guilty.

It is trite law under section 228 of Criminal Procedure Act [CAP 20 R.E. 2019] that the accused is to be called upon to plead. If he pleads guilty it is important to record as nearly as possible in his own words. Therefore, words like "It is true", "It is not true", "I admit" are ambiguous or constitute imperfect plea because they may not amount to plea of guilty. This was held in the case of **Kato v R [1971] HCD 364**. The need for ensuring the procedure for plea taking is followed to avoid ambiguous, unfinished, or imperfect pleas was emphasized by the Court of Appeal of Tanzania in case of **Mandisela Kunguru's case [supra]** at pages 13-14 where the court held that the case failed to comply with requisite procedure for plea taking and thus the plea was not unequivocal.

Without sugar coating it is apparent on the records of the trial court proceedings (at page 1) that in the present case the plea of the 1st appellant (1st accused) was equivocal. I thus proceed to quash all the proceedings right from the plea taking, and the conviction. The sentence is also set aside. I order a new trial be conducted by taking the 1st appellant's plea afresh. While waiting for retrial the appellant shall remain in custody or be admitted to bail.

DATED at TANGA this 16th Day of July, 2021.



U. J. AGATHO

JUDGE

16/07/2021

Date: 16/7/2021

Coram: Hon. U.J. Agatho, J

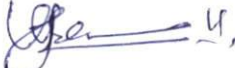
Appellant: Present with his advocate, Joseph Kulemba.

Respondent: Joseph Makene SA for the respondent

B/C: Alex

Court: Judgment delivered on this 16th day of July, 2021 in the presence of the Appellant and his advocate, Joseph Kulemba, and Joseph Makene State Attorney for the Respondent.




U. J. AGATHO
JUDGE
16/07/2021