IN THE HIGH COURT OF TANZANIA

(DODOMA DISTRICT REGISTRY)

AT DODOMA

CRIMINAL APPEAL NO. 02 OF 2021

(Arising from a decision of District Court of Bahi in Traffic Case No. 19 of 2020 dated 16th December, 2020 Hon. S.M. Mwalilino – RM)

ABDULKARIM ISSA GOBOGOBO ..... APPELLANT

VERSUS

THE REPUBLIC ..... RESPONDENT

JUDGMENT

13th April, 2021 & 3rd May, 2021

M.M. SIYANI, J.

On 16th December, 2020, the appellant herein one Abdulkarim Issa Gobogobo, was arraigned at the District Court of Bahi at Bahi, with three offences under the road Traffic Act Cap 168 RE 2002. While in the first count he was indicted for causing death through dangerous driving contrary to section 40 (1), 27 (1) (a) and 63 (2) (a); the second and third counts involved failure to stop at a scene of accident and driving a defective motor vehicle contrary to section 57 (1), 63 (2) (d), 39 (1) (a) and (5) of the Road Traffic Act [Cap 168 R;E 2002] respectively.

The trial court record indicates that when the charges were read over and explained to him, the appellant pleaded guilty to all counts. As such, he was convicted on his own plea of guilty and sentenced accordingly. Aggrieved, the instant appeal has been preferred. The petition of appeal presented contains two grounds as follows:

1. *That the trial Magistrate had gravely erred in law and fact to base the conviction to the appellant relying on an Equivocal plea of guilty.*
2. *That, the trial magistrate erred in law and fact to base the conviction to the appellant relied on a defective charge.*

When the appeal came for hearing on 13th April, 2021, the appellant who was in court, had also the services of Mr. Emmanuel Bwile, the learned advocate. On the other hand, Ms Bertha Kulwa, the learned State Attorney appeared for the respondent/Republic. Through his brief address to the court, counsel Bwile argued that the trial court wrongly convicted the appellant on an equivocal plea of guilty. He contended that being charged for causing death through dangerous driving, the appellant's admission to have caused death to a police officer, did not include admission to cause the said death through dangerous driving which is one of the ingredients

of the offence in respect of the first count. Similarly for the second and third counts, the appellant admitted failure to stop and driving a defective motor vehicle but according to Mr. Bwile, there was no indication that the scene was safe for him to stop.

The learned counsel argued that the appellant did not understand the charges placed against him and such pleas were ambiguous, unfinished and so equivocal which ought not to be acted as a basis of conviction. To support his stance, Mr. Bwile referred the cases of; **Abdallah Jumanne Kabangwa** Vs Republic, Criminal Appeal No. 321 of 2017 and **Baraka Lazaro Vs Republic**, Criminal Appeal No. 24 of 2016 where the Court of Appeal of Tanzania observed that admission of an offense must be that which shows the accused person understood the charge and pleaded guilty to every element of the offense. Reference was also made to the case of **Veniste Niyondanyi Nestory Vs. Republic** Criminal Appeal No. 63 of 2020 in which this court underscored the need to have an admission to a charge in respect of all ingredient of the offence before one is convicted on his own plea of guilty.

On the second ground of appeal, Mr. Bwile submitted that there were contradictions on the particulars of the charge as while in the first place

the same reveals that the appellant act caused death through dangerous driving, the statement that followed indicates the accident caused damages as well. As far as the second count is concerned, it was argued that the appellant caused injuries to several persons and that it was safe for him to stop. In view of the learned counsel, the charge sheet however did not disclose how safe was the scene to enable him stop. He went further to submit that even the charge sheet itself was defective for failure to disclose the defects which were dangerous or likely to be so. According to him the charge sheet ought to indicate the danger that could have been caused by the defects.

In the fine counsel Bwile argued in line with the decisions in the cases of; **Zephania Siyame Vs Republic** (2016) TLS LR 326, **Samson Daniel Mwangomb'e Vs Republic** (2016) TLS LR 411, **Leonard Mwanashoka Vs Republic** (2016) TLS LR 41, and **Mussa Mwaikunda Vs Republic** (2006) TLR 387 and contended that the charge sheet ought to contain all particulars necessary to give reasonable information as to the offense charged and failure to do so renders the same defective.

Replying the above arguments, it was submitted by Ms Bertha that the appellant who admitted all the facts in respect of the charged offences,

was convicted for his own unequivocal plea of guilty. The learned State Attorney believed the trial court observed a correct procedure and the appellant's plea was perfect and clear. Taking a leaf from **Veniste Niyondanyi Nestory Vs. Republic** (supra) Ms Bertha argued that the appellant's plea was equivocal because the facts adduced, explained the offense in detail to enable the appellant understand the charge.

With regard to the 2nd ground of appeal, it was submitted by the learned State Attorney that drafting of the charge is an art and so save for the necessary facts, the same is not expected to contain everything. While admitting that inclusion of the issue of damages in the charge sheet was improper, the learned State Attorney argued that the appellant understood the charges because both the provisions of the law and particulars of the offences in all the three counts with which the appellant was convicted, were proper and clear.

Having revisited the trial court's record and the rival submissions from the learned counsels, I find prudent that I set the records clear on the position of the law with regard to appeals against conviction on plea of guilty. The Section 360 (1) of the Criminal Procedure Act Cap 20 RE 2019 bars such appeals against conviction where such conviction was a result of the

appellant's plea of guilty. For easy of reference, I have reproduced the contents of section 360 (1) of the Criminal Procedure Act (supra) as hereunder

> *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*

It follows therefore that since the appellant pleaded guilty to the charged offences and convicted as a result of his own plea of guilty, then serve for an appeal against sentence, no appeal could have been allowed against conviction.

That notwithstanding, for that estoppel to apply against the appellant, it must first be established that the plea was unequivocal. This court has in different occasions highlighted circumstances under which an appeal on plea of guilty against conviction may be allowed. In **Lawrence Mpinga Vs Republic** (1980) TLR 166 Saanatta, J. as he then was, held that:

> *An accused person who had been convicted by any court of an offence on his own plea of guilty,*

may appeal against the conviction to a higher court on the following grounds:

1. *That taking into consideration the admitted facts his plea was imperfect, ambiguous or unfinished and, for that reason, the lower court erred in law in treating it as a plea of guilty;*
2. *That he pleaded guilty as a result of a mistake or misapprehension;*
3. *That the charge laid at his door disclosed an offence not known to law; and that upon the admitted facts, he could not in law have been convicted of the offence charged. [Emphasis supplied]*

Gathering from the above decision, it is possible, in my view where the conviction was a result of an equivocal Plea, for an aggrieved person to appeal against conviction. As indicated before, this appeal is an attempt by the appellant to challenge his conviction basing on a plea of guilty recorded during the trial by arguing that the same was equivocal and unfinished. The record in the instant case shows the trial court recorded the words "It is true I caused death to the police officer" in respect of the first count and "It is true I failed to stop" for the second count before recording "It is true I drive a defective motor vehicle" for the third count.

The trial court was satisfied that the appellant's plea in respect of the three counts, was complete and so entered a plea of guilty.

The procedure to be followed by a court of law in case of plea of guilty was laid in the case of **Rex Vs Yonasani Egalu and Others** (1942) EACA 65 at Page 67, a decision which was quoted with approval by the Court of Appeal of Tanzania in **John Faya Vs Republic,** Criminal Appeal No. 198 of 2007, where the defunct Eastern African Court of Appeal stated the following:

> *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 constituent and that what he says should be recorded in a form which will satisfy an appellate court that he fully understood the charge and pleaded guilty to every element of it unequivocally. [Underlined emphasis supplied]*

Again, in **Adan Vs Republic** [1973] EA 445 which was cited with approval by the Court of Appeal of Tanzania in **Khalid Athuman Vs Republic** (2006) TLR 79, the same court observed the following at page 446:

> *When a person is charged, the charge and the particulars should be read out to him, so far as possible in his own language, but if that is not possible, then in a language which he can speak and understand. The Magistrate should then explain to the accused person all the essential ingredients of the offence charged. If the accused admits all those essential elements, the magistrate should record what the accused has said, as nearly as possible in his own words and then formally enter a plea of guilty, the magistrate should next ask the prosecutor to state the facts of the alleged offence and when the statement is complete, should give the accused an opportunity to dispute of explain the facts or to add any relevant facts. [Emphasis added]*

My understanding from the above authorities, is that before a person is convicted on his or her own plea of guilty, the following steps must be observed. **One;** The charge and all the ingredients of the offence must be read over and explained to the accused in his language or in a language

he understands. **Two;** the accused person's own words in reply, must be recorded and if there is an admission to all ingredients of the charged offense, a plea of guilty shall be entered. **Three;** the prosecution shall then state the facts of the case before an accused is asked to respond as to its truth or correctness. **Four;** If the accused does not agree with the facts or raises any question on his guilt, his/her reply must be recorded and the court shall change a plea of guilty entered earlier to that of not guilty. **Five;** if there is no change of plea and that the accused admits each and every ingredient of the charged offence including exhibits (if any), then, the court has to enter a conviction.

As noted, in the matter which is a subject of the instant appeal, what the court considered as an admission to the charge in respect of the first count was "It is true I caused death to the police officer". In my opinion this plea was unfinished. Such a plea did not carry one of the essential elements of the offence of causing death through dangerous driving which is admission on driving a motor vehicle dangerously. The court had to ensure that the accused before it, qualify his statements by elaborating the cause of death because without such clarification, his plea could be subject of several meaning. He might have for example admitted to have

caused death through reckless driving. Similarly in the second count. A plea of "It is true I failed to stop" was in my view unfinished because one of the ingredients of the offence of failure to stop after causing an accident under section 57 (1) of the Road Traffic Act (supra) is safety of the scene. His plea ought to have indicated that the scene was safe and yet he failed to discharge his legal duty to stop having caused an accused. For easy of reference, I have reproduced the contents of section 57 (1) as hereunder:

> *57. Duties of drivers in case of accidents*
> *(1) Where an accident arising directly or indirectly from the use of a motor vehicle or trailer occurs to any person or to any motor vehicle or trailer or to any other property, the driver of the motor vehicle or trailer shall stop if, having regard to all the circumstances,* ***it is safe for him to do so*** *and shall ascertain whether any person has been injured, in which event it shall be his duty to render all practicable assistance to the injured person:* ***Provided that where the driver does not stop because it is not, having regard to all the circumstances, safe for him to do so,*** *he shall immediately report the accident at the nearest police station [Emphasis added]*

In **Safari Deemays Vs Republic**, Criminal Appeal No. 269 of 2011, the Court of Appeal of Tanzania observed the following on the need for a person who pleads guilty to finish his plea:

> *.....It would be more ideal for an appellant who has pleaded guilty to say more than just, "it is true". A trial court should ask an accused to elaborate, in his own words as to what he is saying " is true".*

The above said and done, I agree with Mr. Bwire that the appellant's pleas in respect of the first and second counts, were ambiguous, incomplete and therefore equivocal.

The trial court's record reveals further that after recording the appellant's plea, the court adopted what appears to be typed facts tendered by the prosecution side to be part of the proceedings. However, despite indicating the appellant's response to the facts, the record is silent as to whether those facts were read over and explained to him and if the appellant was asked to reply. According to such record, the appellant responded to the facts before the same were read over to him. That was a procedural irregularity and it is therefore obvious that when convicting the appellant for the purported plea of guilty, the trial court did not align

itself with the procedure laid in cases of **Adan Vs Republic** and **Khalid Athuman Vs Republic** (supra) as indicated earlier.

For the reasons above, I find merits in the first ground of complaint which suffices to dispose the entire appeal. I will therefore not dwell on the second ground as doing that will amount to an academic exercise. The irregularities notes, renders the trial court's proceedings a nullity and so is its ultimate conviction and sentence. In the circumstance, the instant appeal is allowed by quashing the proceedings and set aside the conviction and sentence meted to the appellant. I order the file be remitted to the trial court for an expediated fresh trial before another magistrate of competent jurisdiction. It is further ordered that should the new trial lead to a conviction, the time the appellant has spent in prison serving the current sentence, should be taken into account when passing the sentence. Considering the nature of the case, I direct that the appellant, be remanded in custody until when taken to the trial court where his right to bail will be considered. Order accordingly.

DATED at **DODOMA** this 3rd day of May, 2021

THE HIGH COURT TANZANIA

M.M. SIYANI

JUDGE