

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
MOSHI DISTRICT REGISTRY**

CRIMINAL APPEAL NO. 35 OF 2021

(Originating from Criminal Case No. 140 of 2020 in the
District Court of Mwanga at Mwanga)

MTINDA WAZIRI ATHUMANIAPPELLANT

VERSUS

THE REPUBLICRESPONDENT

JUDGMENT

MUTUNGI .J.

The appeal is against the conviction and sentence by the District Court of Mwanga in Criminal Case No. 140/2020. The appellant is seen to have pleaded guilty to a charge of armed robbery, contrary to section 287A of the Penal Code, Cap 16 R.E. 2019. He was henceforth convicted on his own plea of guilty and sentenced to 30 years imprisonments. His appeal is based mainly on five detailed grounds of appeal of which I will not reproduce but will consider them in due course of summarizing and discussing the appeal.

During the hearing, the Appellant was unrepresented while the Respondent was represented by Mr. Mwinuka

learned Sate Attorney. Since the Appellant was unrepresented the court ordered the matter to proceed by way of written submissions.

In view of the first, second and third grounds of appeal the Appellant submitted, on the trial magistrate's failure to comply with section 228(1) of the Criminal Procedure Act where the charge was supposed to be read and explained to him in a language he understands before entering such plea of guilty. Given that he was unrepresented was not conversant with what transpired and the record is silent if at all the charge was fully explained to him.

The Appellant was of the view, the trial magistrate ought to have been cautious when handling his case where the offence he was charged with was grave and attracted a severe punishment. In view thereof, the trial magistrate was to make sure that the plea is unequivocal. He cemented his argument by referring the court to the case of **Anastazia vs Republic, Criminal Appeal No. 36 of 2000 CAT at Dodoma (Unreported).**

Under the fourth ground the Appellant is faulting the trial magistrate for convicting him while the facts did not disclose the ingredients of the offence of armed robbery.

He referred the court to the case of **Peter Shangwea vs Republic, Criminal Appeal No. 282 of 2015 CAT at Arusha (Unreported)**. It was his submission that the element of “threat” being the main ingredient of the offence of armed robbery was not disclosed.

Under the fifth ground, he faulted the trial court for failure to note that the prosecution presented fabricated facts which were to be approached with great care before relying on them. He added the facts revealed there was an intention of lying in order to attract certain ends. Expounding further, he submitted it is impossible for one to steal hens in the hut outside the dwelling house then break the dwelling house window and enter inside while still holding the stolen hens.

In the upshot, the Appellant called upon this court to re-evaluate the said facts and find there is an irregularity in the charged offence and resolve it in his favour. He thus prayed for the court to allow the appeal by quashing the conviction and setting aside the sentence.

On the other side of the coin, Mr. Mwinuka learned State Attorney explained, reading through the proceedings it is not certain as what facts were admitted to by the Appellant. Mr. Mwinuka added, the words **‘it is true’** have

no further explanation which is contrary to the practice adopted in the case of **Josephat James vs The Republic, Criminal Appeal No. 316 of 2010 (unreported) at page 5, 6 and 8.**

The learned state Attorney prayed the proceedings be quashed or in alternative the court orders a retrial. He cemented his prayer by referring the court to the authority in the case of **Fatehali Manji vs Republic [1966] E.A 341.**

The Appellant did not file a rejoinder.

Having given due consideration to the trial court's record as well as the submissions by the parties, I find the issue for consideration is ***whether the Appellant's plea was equivocal.*** Both parties were of the same view that, the plea was equivocal. Before going to the merit or otherwise of the appeal, I wish to state from the very beginning the circumstances upon which the instant appeal lies. In the case of **Josephat James vs. Republic, Criminal Appeal No. 316 of 2010, CAT, Arusha Registry (unreported)** the Court of Appeal stated the exceptions where one can appeal against a plea of guilty as follows;

- (i) *The plea was imperfect, ambiguous or unfinished and, for that reason, the lower court erred in law in treating it as a plea of guilty;*
- (ii) *An appellant pleaded guilty as a result of a mistake or misapprehension;*
- (iii) *The charge levied against the appellant disclosed no offence known to law, and*
- (iv) *Upon the admitted facts, the appellant could not in law have been convicted of the offence charged.*

The law is settled as to the procedure to be adopted when an accused person pleads guilty to an offence charged.

Section 228 (2) of the CPA states: -

"If the accused person admits the truth of the charge, his admission shall be recorded as nearly as possible in the words he uses, and the magistrate shall convict him and pass sentence upon or make an order against him, unless there shall appear to be sufficient cause to the contrary."

In the appeal at hand, the Appellant was charged under section 287A of CPA which reads: -

"...Any person who steals anything, and at or immediately after the time of stealing is armed

with any dangerous or offensive weapon or instrument, or is in company of one or more persons, and at or immediately before or immediately after the time of the stealing uses or threatens to use violence to any person, commits an offence termed "armed robbery" and on conviction is liable to imprisonment for a minimum term of thirty years with or without corporal punishment."

I painstakingly took time to peruse the trial court records to capture what actually transpired. On 08/09/2020 when the charge was read over and explained to the appellant who was asked to plead thereto, the trial Magistrate recorded the plea of the accused as reflected hereunder: -

"Accused; it is true

Entered as plea of guilty.

Sgd: M.B.Lusewa

PRM i/c

08/09/2020

FACTS: Accused person's name and address as per the charge.

On 05/09/2020 at 0130hrs a person named Zubeda d/o Mbwana while at home heard a heavy knock and steps inside her house, sitting room thus went to see what was happening and found accused person holding two hens. Zubeda got hold of the accused while screaming for help from neighbors and accused hit her with iron bar 'nondo' he had on her legs.

Zubeda did not let go of the accused until people showed up and apprehended him. Those hens belonged to Zubeda, both valued at Tshs 30,000/= of which accused had stolen from a hut/barn outside the house. And he went inside the house through window.

Accused was apprehended, taken to police Ngulu where he was interrogated and admitted to the offence hence charged accordingly.

Sgd: M.B.Lusewa
PRM i/c
08/09/2020

Accused person; I admit all facts are true and correct.

Court findings; Facts admitted do constitute the charged offence of Armed Robbery, hence accused person is found guilty and convicted in his own plea of guilty."


Guided by the court's record and the cited authorities, I am of the considered view that the accused plea was equivocal for two reasons. **First**, the key ingredient of "threat" as provided for under **section 287A supra** was not contained in the facts which were pleaded to by the appellant. It is trite law that every constituent of the charge should be explained to the accused, to allow the accused to admit or deny the same. This position was also stated in the case of **Baraka Lazaro vs. Republic Criminal Appeal No. 24 of 2016**. In line thereof, the appellant could not in law have been convicted of the offence charged.

Second, it is true as submitted by the two sides that the plea was uncertain as to what was admitted and what was not admitted by the Appellant. By simply stating "it is true" was insufficient for the trial court to have been unambiguously informed of the appellant's clear admission of the truth of its contents. I am settled that it is


doubtful whether the said expression by itself without any further elaboration from the appellant constituted an admission of the truth to the charge. He was to say more in such a grave offence as rightly submitted by the appellant than simply stating "it is true". It follows the plea was unfinished and ambiguous.

The learned State Attorney prayed for the retrial. It is trite law that where the court is satisfied that the plea was equivocal, the court may order a retrial. See the case of **Baraka Lazaro (supra) Court of Appeal Bukoba (unreported)**. In that regard, due to the findings that the appellants' plea was equivocal, I hereby allow the appeal. I proceed to nullify the whole proceedings with respect to Criminal Case No. 140 of 2020, quash the conviction on the purported plea of guilty, and set aside the sentence. The file be remitted to the trial court for a re-trial. I hereby further direct the case to be fast tracked.





B. R. MUTUNGI
JUDGE
12/8/2021

Judgment read this day of 12/8/2021 in presence of the Appellant and Miss Grace Kabu (S.A) for the Respondent.


B. R. MUTUNGI
JUDGE
12/8/2021

RIGHT OF APPEAL EXPLAINED.


B. R. MUTUNGI
JUDGE
12/8/2021