

**IN THE HIGH COURT OF TANZANIA**

**SONGEA DISTRICT REGISTRY**

**AT SONGEA**

**DC. CRIMINAL APPEAL NO. 14 OF 2021**

**(Original Cr. Case No. 23 of 2021 of the District Court of Nyasa District at Nyasa)**

**FRANCE DOMINICUS SHARO@ CHIWANGU.....APPELLANT**

**VERSUS**

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

**JUDGMENT**

29.09.2021 & 27.10.2021

**U. E. Madeha, J.**

At Nyasa District Court in Ruvuma region, the above-named appellant was charged with two counts. The first count was Burglary c/s 294 (1) (a) (b) and (2) of the Penal Code Cap 16 (R.E 2019) and the second count was the count of Stealing c/s 265 of the Penal Code Cap 16 (R.E 2019). The appellant was convicted and sentenced on his own plea of guilty. The allegation against the appellant is that on 16.6.2021 during the night time, at Tingi village within Nyasa District, the appellant breaks and enter to the house belongs to the nuns of the Catholic church then without the owner permission, he committed the offence of stealing a television set measuring 24 inches, valued Tshs 280,000/=, one azam decoder valued Tshs

170,000/=, a keyboard computer valued Tshs 140,000/= and cash amounting to Tshs 30,000/=. When the appellant was searched at his house by police No. 6985 CPL Nyagwisi, they found the stolen properties. At the police station, he confessed having committed the offences. At the end of the trial, the conviction was entered against the appellant for the offence of burglary and stealing, and he was respectively sentenced to serve twenty (20) years and seven (7) years' imprisonments. The sentences were ordered to run concurrently. The appellant was aggrieved by the findings of the trial court. The appellant has to come to this court on appeal.

The appellant faulted the decision of the court below that the sentence pronounced by the trial magistrate was not clear and prayed the Court to look at the issue of the sentence. The appellant averred further that he was taken to the police station at the age of seventeen, but on the charge sheet it appears he is twenty-one years old.

Following the appellant's allegations, Ms. Shose Naimani, learned Senior State Attorney, submitted that since the appellant was convicted and sentenced after he pleaded guilty, he is required to appeal only against the extent of the sentence imposed to him and not against the conviction. No appeals on a plea of guilty are permitted under Section 360 of the Criminal

Procedure Act, Cap 20, R.E. 2019. The State Attorney argued further that the maximum sentence for the offence of stealing is seven years, while for the offence of burglary is 20 years. Therefore, the sentence was properly imposed and prayed the appeal to be dismissed. With the foregoing response of the Learned Senior State Attorney, the appellant prayed the court to reduce the sentence or to set him free.

In view of the grounds of complaint raised, the issue is whether the plea of guilty entered by the appellant was not in terms of the law. I agree with the Senior State Attorney that a person convicted of an offence on his own plea of guilty is barred from appealing against conviction, but he can appeal only against the extent of the sentence imposed on him as per **section 360 (1) of the Criminal Procedure Act Cap 20 R.E. 2019**. It is also stated in the case of **Ally Shabani @ Swalehe Versus Republic**, Criminal No. 351 of 2020, CAT at Dodoma (unreported). But there is a circumstance in which a person convicted and sentenced on his own plea of guilty can appeal, especially when the plea was equivocal. In the case of **Carlos Punda Versus Republic**, criminal appeal No. 153 of 2005 (unreported), the court provided the factors where the plea of guilty can be regarded as equivocal. Those factors are as follows:

1. *That even taking into consideration the admitted facts, 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;*
2. *That, the appellant pleaded guilty as a result of mistake or misapprehension;*
3. *That, the charge laid at the appellant's door disclosed no offence known to law; and*
4. *That upon the admitted facts the appellant could not in law have been convicted of the offence charged.*

Consequently, it is on the record that the appellant pleaded guilty to the offence of Burglary under section 294 (1) (a) of the Penal Code Cap 16 (R.E. 2019) for the first count, and also the appellant pleaded guilty to the second count of stealing under section 265 of the Penal Code Cap 16 (R.E. 2019). However, it is clear to me that after those facts were narrated, the court did not read the facts to the accused person. This was emphasized by the Court of Appeal in the case of **Khalid Athumani Versus Republic** [2006] Court of Appeal Arusha, TLR 79. It was observed that:

*"When a person is charged, the charge and the particulars should be read out to him, so far as possible, then in*

*language 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 then admits all these essential legal 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."*

Likewise, in this case, the accused was not found guilty. In a court finding, the court was supposed to record the facts, which the accused has admitted without qualification, constitute the offence charged. I accordingly find him guilty of burglary under section 294 (1) (a) of the Penal Code Cap 16 (R.E. 2019) for the first count, and the count of stealing under section 265 of the Penal Code Cap 16 (R. E. 2019) as charged, and I duly convict him forthwith on his own plea. Since the appellant was not found guilty of the offence of burglary and stealing, there is no valid verdict upon which the court could uphold or dismiss.

As a result, I accede to invoking the revision powers under section 373 of the Criminal Procedures Act, Cap. 20 R.E. 2002. In fine, the entire proceedings are nullified with an order for a re-trial to be presided over by

another trial magistrate. In the meantime, the appellant should remain in custody. Order accordingly.

**DATED** and **DELIVERED** at **SONGEA**, on 27<sup>th</sup> day of **OCTOBER** 2021.



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**U. E. MADEHA**  
**Judge**  
**27/10/2021**

