IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF MBEYA

AT MBEYA

CRIMINAL APPEAL NO. 18 OF 2022

(Originating from the District Court of Mbeya, at Mbeya in Traffic Case No. 19 of 2022)

GILO SEJU MWAMLIMA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

Date of last Order: 25.03.2022

Date of Judgment: 13.05.2022

Ebrahim, J.

In the District Court of Mbeya District, at Mbeya in Traffic Case No. 19 of 2022, the appellant, GILO SEJU MWAMLIMA was charged and convicted on his own plea of guilty of the offence of causing bodily injuries through dangerous driving contrary to **sections 40 (1), 63 (2)(a) and 27 (1) (a) of the Road Traffic Act, Cap. 168 R.E 2019.** He was sentenced to serve a period of four years imprisonment.

The facts of the case as per the charge sheet at the trial Court were that on 8th day of January 2021 at Uyole area along Mbeya/Tukuyu road within the District and Region of Mbeya the appellant being a driver and in charge of Motor vehicle with registration No. T. 845 DQJ make Toyota Coaster did drove the same dangerously to wit, at a high speed as a result he knocked one Carine D/O Godfrey who was crossing the road and caused bodily injuries to her. When the charge was read out to the appellant, he pleaded guilty. Following the plea of guilty, the prosecutor read out the facts which the appellant also admitted. Then the prosecutor tendered the vehicle inspection report of the said vehicle, the sketch map and a PF3 of the victim. The trial court admitted the said documents as exhibit P1, P2 and P3 respectively. Accordingly, as shown earlier, the appellant was convicted and sentenced.

Dissatisfied, the appellant lodged this appeal predicating five grounds of appeal, of which one of them was abandoned, as follows:

- That the honourable trial Magistrate erred in law by imposing sentence to the appellant which is not supported by the charge sheet and facts as read to the accused during trial.
- That the honourable trial Magistrate misdirected himself in law and facts to hold that the appellant's plea was unequivocal.
- That the sentence imposed was manifestly harsh and excessive.
- That the honourable trial Magistrate erred in law and fact by his failure in determining the facts adduced if discloses or establish all the elements of the offence charged.

During the hearing of the appeal, the appellant was represented by advocate Mwabukusi, while Ms. Sarah Anesius learned State Attorney appeared for the respondent/Republic.

Arguing for the appeal, advocate Mwabukusi relying on the principle in the case of **Ndaiyai Petro v. Republic**, Criminal Appeal No. 277 of 2012 Court of Appeal of Tanzania (unreported) argued that the plea by the appellant was equivocal. According to Mr. Mwabukusi the facts which are following to the plea of guilty should disclose the offence charged. However, in the instant case

the facts read were a mere repetition of the charge he argued. To support his argument, he cited the cases of **Michael Adrian Chaki v. Republic,** Criminal Appeal No. 399 of 2019 CAT (unreported) and **Mariam Mashauri v. Republic** Criminal Appeal No. 76 of 2007, High Court of Tanzania at Dar es Salaam (unreported).

According to Mr. Mwabukusu the facts were supposed to disclose the data of the said high speed. It was not enough to state that the appellant drove the motor vehicle at high speed without disclosing the same. He referred to the case of **Masumbuko Athumani v. Republic** [1991] TLR 19 and **G.M. Daya v. Republic** EALR (1964) 529.

Regarding the complaint on the sentence, Mr. Mwabukusi submitted that the sentence imposed to the appellant was manifestly harsh. This is because the appellant was not a habitual offender. He said, the appellant co-operated with the court for readily pleading guilty. To support his stance, he cited the case of **Fortunatus Frugence V. Republic**, Criminal Case No. 120 of 2007 CAT at Mwanza (unreported). He thus prayed for the court to quash the sentence and set it aside.

Arguing against the appeal, Ms. Anesius for the respondent resisted the appeal, she supported the conviction and the sentence meted. She argued that the plea was unequivocal since the charge explained the ingredients of the offence. She responded also that the appellant understood the nature of the offence that he drove dangerously at the high speed as the result caused injury to the victim. Ms. Anesius also argued that the facts read to the appellant disclosed the ingredients of the offence that is why the appellant admitted the same.

Ms. Anesius further argued that since the case did not go to the full trial, mentioning the exact speed was not necessary. She thus distinguished the case of **Masumbuko Athumani** (supra) where it was observed that the mention of the speed was crucial since the case was fully tried.

Regarding the complaint that the sentence was harsh, Ms. Anesius argued that the sentence was in accordance with **section 63 (2) (a) of Cap. 168.** According to her, the offence under which the appellant was convicted attracts the sentence of not less than three years. The appellant was sentenced to four years

which is more than three. She thus, urged the court to dismiss the appeal.

In his short rejoinder, Mr. Mwabukusi for the appellant insisted that the plea was equivocal. He added that the sentence was not justified since there was no any aggravating fact. He therefore reiterated the prayer.

I have considered the submissions by counsel for the parties and the record. Before I venture into the merits of the appeal, I find it prudent to set the records clear on the position of the law with regard to appeals against conviction on plea of guilty.

Section 360 (1) of the Criminal Procedure Act, Cap 20 R.E 2019 (CPA) bars such appeals against conviction where such conviction was a result of the appellant's plea of guilty. For easy of reference, the section provides:

> *"360 (1) No appeal shall be allowed in the case of any accused person who has pleaded guilty and has been convicted of 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 offence 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.

Notwithstanding, for that estoppel to apply against the appellant, it must first be established that the plea was unequivocal. In different occasions, this court and the Court of Appeal has highlighted the circumstances under which an appeal on plea of guilty against conviction may be allowed. **In Lawrence Mpinga v. Republic (1980) TLR 166** it was held that:

> *"An accused person who had been convicted by 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."*

That being the position of the law, the issue for consideration is whether on the facts as reflected from the record of the trial Court, the appellant unequivocally pleaded guilty to the charge. In answering the issue as posed above, my reliance shall be confined in the conditions set in the case of **Michael Adrian Chaki v. Republic** (supra). In that case the CAT set conditions which must be conjunctively met in order a valid conviction be founded on an unequivocal plea. These conditions are as follows:

1. *"The appellant must be arraigned on a proper charge. That is to say, the offence section and the particulars thereof must be properly framed and must explicitly disclose the offence known to law;*
2. *The court must satisfy itself without any doubt and must be clear in its mind, that an accused fully comprehends what he is actually faced with, otherwise injustice may result.*
3. *When the accused is called upon to plea to the charge, the charge is stated and fully explained to him before he asked to state whether he admits or denies each and every particular ingredient of the offence. This is in terms of section 228 (1) of the CPA.*

4. *The fact adduced after recording a plea of guilty should disclose and establish all the elements of the offence charged.*
5. *The accused must be asked to plead and must actually plead guilty to each and every ingredient of the offence charged and the same must be properly recorded and must be clear (see* ***Akbarali Damji vs R.*** *2 TLR 137 cited by the court in* ***Thuway Akoonay vs Republic*** *[1987] T.L.R. 92);*
6. *Before a conviction on a plea of guilty is entered, the court must satisfy itself without any doubt that the facts adduced disclose or establish all elements of the offence charged."*

Now, in the instant case, the question is, did the trial court consider the above conditions? Going through the proceedings on record, it is my view that it did. This is because, the appellant was charged with causing bodily injuries through dangerous driving contrary to **section 40 (1) of Cap. 168** which provides that:

> *"Any person who causes bodily injury to, or the death of any person by the driving of a motor vehicle or trailer recklessly or at a speed or in a manner which having regard to all circumstances of the case, is dangerous to the public or to any person shall be guilty of an offence."*

Then the charge sheet contained the penalty sections i.e **section 63 (2) (a) and 27 (1) (a) of the same Act**. The particulars of the offence showed clear that the appellant being a driver and the in charge of motor vehicle with registration No. T. 845 DQJ make Toyota Coaster drove it dangerously at a high speed as a result failed to control it and knocked one Carine Godfrey causing her bodily injury. Verily, the details were enough clear for the appellant not to understand the offence he was charged with. In his plea, he pleaded as follows:

"Your honour it is true I caused bodily injuries through dangerous driving of the motor vehicle."

It is also my view that the facts which were adopted by the trial court were read and explained to the appellant. The facts elaborated and disclosed the ingredients of the offence. In my view the ingredients of said offence is dangerous driving and causing bodily injuries or death. That being the case the facts revealed the same. In further elaboration and explanation, prosecution tendered exhibits one of them being the PF3 which showed that the victim sustained injuries as the result of car

accident. Upon the facts being read and explained to the appellant, he replied that:

"Your honour I heard the facts and understood them well. I admit all the facts that I dangerously drove the car and knocked the victim at Uyole area."

Such admission was nothing than admitting the truth of the offence he was charged with. Mr. Mwabukusi was of the view that the facts would have disclosed what was the speed referred to as high. However, I concur with Ms. Anesius for the respondent that the same would be crucial if the case went to a full trial. I also concur with Ms. Anesius that the case of **Masumbuko Athumani** (supra) is distinguishable to the case at hand. This is because, in that case parties called their witnesses to testify, but prosecution did not prove the high speed. In the case at hand the exact speed was supposed to be disclosed if the appellant had denied that he did not drive dangerously.

All that said the complaints as to grounds 1,2 and 5 of the appeal that the plea was equivocal lacks merits. It was a pure unequivocal plea of guilty thus the conviction was proper.

Now, I have to consider if the sentence imposed to the appellant was manifestly harsh. It is the principle of law that the appellate court does not have a free reign to alter or vary a sentence imposed by the trial Court. See the case of **Rajab Dausi v. Republic**, Criminal Appeal No. 106 of 2012, CAT at Mtwara (unreported).

Moreover, as illustrated in the case of **Silvanus Leonard Nguruwe v. Republic (1981) TLR 66)** there are circumstances in which the Court can interfere with the sentence imposed by the trial court. They include: a) where the sentence is manifestly excessive, or b) where it based upon a wrong principle, or c) manifestly inadequate, or d) where it is plainly illegal, or e) where the trial court failed or overlooked a material consideration or f) where it allowed an irrelevant or extraneous matter to affect the sentencing decision. See also **Swalehe Ndungajilungu v. Republic,** [2005] TLR 97.

In the matter at hand the provisions of law which provides for the penalties to be imposed on a person convicted of the offence of dangerous driving causing bodily injuries are **section 63 (2) (a) and 27 (1) (a).** For easy reference I will quote the former which

the sentence of the appellant was based on according to Ms. Anesius for the respondent. That is **section 63 (2) (a) of Cap. 168**, it provides that:

> *"63 (2) Any person who is convicted of-*
>
> *(a) An offence under section 40 shall be liable to a term of imprisonment of not less than three years and the court may, in addition thereto, impose a fine not exceeding one hundred thousand shillings.*
>
> ***Provided that when only bodily injury did not amount to grievous harm within the meaning that expression in the Penal Code, the person convicted of the offence shall be liable to a fine of not less than two thousand shillings but not exceeding twenty thousand shillings or a term of imprisonment of not less than six months but not exceeding three years****" (emphasis added).*

According to above provision of the law, I partly concur with Ms. Anesius that the penalty of the offence the appellant was convicted is not less than three years. Nonetheless, the proviso to the said section provides for an optional penalty where the injury did not amount to grievous harm. The optional penalty is a fine or

imprisonment of a term not less than six months and not more than three years.

There is no any claim or statement that in the instant matter the victim sustained bodily injuries resulting to grievous harm. As also correctly argued by Mr. Mwabukusi for the appellant that there was no any aggravating factor which the trial Court considered in sentencing the appellant. It is in the record that the appellant was a first-time offender. In his mitigation facts he prayed for a lesser sentence on the account that his mother and children of his sister depend on him. In my opinion, had the trial court considered all these factors it would have imposed a lesser sentence than it had.

Having said as above, I uphold ground 3 of the appeal that the sentence meted by the trial court was manifestly harsh. In that regard I hereby allow the appeal to the extent stated. Consequently, I hereby vary and set aside the sentence of four years imprisonment. I would have imposed a fine as per the law above, however, the appellant has already served about three months imprisonment; the same would cater for the fine. Thus, I

order the immediate release of the appellant from custody unless otherwise lawfully held for other lawful cause.

Ordered according.

R.A. Ebrahim

JUDGE.

Mbeya

13.05.2022

Date: 13.05.2022.

Coram: Hon. P.A. Scout, Ag -DR.

Appellant: Present.

For the Appellant: Ms. Mwakyusa – Adv.

For the Republic: Ms. Hanarose – State Attorney.

B/C: Gaudensia.

Ms. Hanarose – State Attorney:

Your honour, the case is coming on for judgment appellant is under the services of Ms. Mwakyusa Advocate hold brief of Mr. Mwabukusi Advocate. We are ready to proceed.

Ms. Mwakyusa Advocate: Your honour, we are ready too.

Court: Judgement is delivered in the presence of Ms. Hanarose State Attorney, Ms. Mwakyusa Advocate for the appellant, appellant and C/C in Chamber court on 13/05/2022.

A.P. Scout

Ag-Deputy Registrar

13/05/2022

Court: Right of appeal explained.

A.P. Scout

Ag-Deputy Registrar

13/05/2022