

IN THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
SUMBAWANGA DISTRICT REGISTRY
AT SUMBAWANGA
DC. CRIMINAL APPEAL NO.07 OF 2022

DEUS KAZUMBA.....APPELLANT

VERSUS

THE REPUBLIC.....RESPONDENT

**(Appeal from the decision of the District Court of Kalambo
in Criminal Case No. 155 of 2021)**

JUDGMENT

Date of Last Order: 23/05/2022

Date of Judgement: 10/08/2022

NDUNGURU, J:

At Kalambo District Court (henceforth the District Trial Court), an accused person, now appellant namely Deus Kazumba was charged with one offence namely grievous harm contrary to **Section 225** of the Penal Code, Cap. 16 RE 2019.

According to the records of this appeal, he was found guilty of the said offence, convicted on his own plea of guilty and subsequently he was sentenced to serve four (4) years terms in prison in respect of such count. However, he aggrieved by the conviction and sentence imposed by the District Trial Court, hence this appeal.

In his petition of appeal, the appellant fielded five (5) grounds of appeal as hereunder quoted; -

- 1. That he did not commit the serious offence as claimed by the prosecution side,***
- 2. That, the trial court erred in law and fact by convicting and sentence the appellant relying on plea of guilty for the appellant while it fails to not out that the language used by the court were not known to the appellant.***
- 3. That the trial court erred in law point and fact by convicting and sentence the appellant without recording exactly the words used by the appellant in pleading.***
- 4. That, the trial magistrate court totally wrongly in law point and fact by convicting and sentence the appellant relying on plea of guilty for the appellant while he failed to note out that the appellant was denied an opportunity to say or dispute or add anything relevant to facts something which whole process to be nullity.***

5. That, the trial magistrate total wrongly in both conviction and sentence for the appellant by not considering the difference of the appellant that he was drunk. So, it is obviously that the case against the appellant were not proved beyond all reasonable doubts as required by law.

Having read his grounds of appeal I found, in brief his complaint hinge on one ground that he was convicted on equivocal plea of guilty.

When the appeal was called on for hearing, the appellant appeared in person; whereas, the respondent republic had the legal services of Ms. Marietha Magutta, the learned state attorney to argue this appeal. Arguing in support of the appeal, the appellant had nothing to add rather he prayed this court to adopt his five grounds of appeal he filed to this court.

In reply, Ms. Magutta, resisted the appeal by the appellant and went on submitting that **Section 360 (1) of the Criminal Procedure Act, CAP. 20** (henceforth the CPA) does not allow appeal on the offence where the accused pleaded guilty. However, Ms Maguttha submitted that there are some circumstances when the appellant can appeal having pleaded guilty as per the case of **Laurent Mpinga vs Republic** [1983] TLR 166. However, she said in the circumstance of this case, the appellant has not shown such kind of circumstances.

Ms Magutta further submitted that the offence was serious, the appellant's defence was considered, the facts read to him were very clear and she prayed for the appeal be dismissed.

The appellant in rejoinder, informed the court that he was severely beaten, but he never confessed to have committed the alleged offence.

I have thoroughly gone through the records of the District Court. I have as well read between the lines the appellants' grounds of complaints, his submission and that of Ms. Magutta

First and foremost, as general rule, as rightly submitted by Ms. Magutta, a person convicted of his own plea of guilty ordinarily, has no room in law, to appeal against such conviction of the offence to which he pleaded guilty. This is provided under **section 360(1) of the Criminal Procedure Act, Cap 20** (henceforth the CPA). The said **subsection (1) of section 360 of the CPA** provides and I quoted as follows;

"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"

The above statutory position has been upheld in a number of decided cases by this court as well by the Court of Appeal. There is exception to that general rule. There are instances whereby a person convicted of his own plea of guilty, appeal against the legality or extent of the custodial sentence imposed upon him. That's one. Two, he can as well appeal against a conviction which was founded on equivocal plea of guilty. That position is fortified by the decision in the case of **Juma Tumbiliya & Two Others versus Republic**: [1998] TLR. 139 whereby it was *inter alia* held that:

"According to S. 360 of the Criminal Procedure Act 1985 an appeal against conviction upon a plea of guilty can only be competent after determining that the plea of guilty was not unequivocal"

Having such legal positions, I find it desirable to examine closely what transpired in the District Trial Court as reflected on the record. On 27.12.2021 when the charge was read over and explained to the accused who was asked to plead his plea was:

1st count - It is true, that I caused injury to police officer namely Insp Mrisho Kimbeho.

This was entered as a plea of guilty to the charge.

Thereafter, Public prosecutor read over and the appellant was asked to plead. The District Court Magistrate recorded the appellant plea to the facts as hereunder quoted; -

"Your honour, all facts are true and I admit them".

I find such plea was unequivocal one.

During narration of facts of the offence by public prosecutor appellant's cautioned statement also was admitted and marked as exhibit P1.

Upon admission of facts the District Trial Court, then the District Court Magistrate proceeded to convict the appellant on the following words and I quote:

"COURT FINDING"

From facts adduced and admitted by 2nd accused, this court find the 2nd accused guilty with the offence of causing grievous harm and is hereby convicted through his plea of guilty.

RUGEMALIRA

SRM

27/12/2021 (Sic)

From the facts narrated to the appellant and his reply, the question is whether the present appellant was convicted according to law? For my part, I have no hesitation in answering in the affirmative. The appellant was charged of one count as stated herein above namely causing grievous harm contrary to **section 225 of the Penal Code, of CAP. 16**. The appellant having pleaded guilty in respect of the offence, the District Court Magistrate convicted him on his own plea of guilty. With that view, I find the appellant was properly convicted.

The law is clear as regards conviction entered based on the plea of guilty. The provision of **section 228 (2) of the CPA**, provides as follows;

“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 appears to be sufficient cause to the contrary” [Underline is mine]

The above provision is very clear, it reveals that before passing sentence against an accused person who has been found guilty on his own

plea of guilty, the court must be satisfied that the accused plea of guilty is unequivocal one.

With respect, I have not any found any irregularity on face of trial court proceedings.

I therefore refrain from interfering the trial court proceedings, conviction as well the sentence imposed on the appellant. In fine the appeal by the appellant has no merit, the same is dismissed.

It is accordingly ordered.




D.B. NDUNGURU
JUDGE
10.08.2022