

**THE UNITED REPUBLIC OF TANZANIA**  
**JUDICIARY**  
**IN THE HIGH COURT OF TANZANIA**  
**SUMBAWANGA DISTRICT REGISTRY**  
**AT SUMBAWANGA**  
**DC. CRIMINAL APPEAL NO. 02 OF 2022**

**NICOLAUS <sup>S</sup>/o NZOYA @ DAUDI.....APPELLANT**

**VERSUS**

**THE REPUBLIC.....RESPONDENT**  
(Appeal from the decision of the Nkasi District Court at Namanyere  
in Criminal Case No. 122 of 2021)

**JUDGMENT**

Date of Last Order: 24<sup>th</sup> August 2022

Date of Judgement: 20<sup>th</sup> September 2022

**NDUNGURU, J:**

In the Nkasi District Court at Namanyere (henceforth the District Court), the appellant, Nicolaus Nzoya @ Daudi was arraigned of one offence of stealing animals contrary to section 258 (1), 268 (1) (3) of the Penal Code, Cap 16 RE 2019.

The particulars of the offence are that, on 08th day of September 2021 at Nkundi village within Nkasi District in Rukwa Region, the appellant did steal ten 10 cows valued Tshs. 5,400,000/=

and nine 9 goats valued at Tshs 600,000/= all make total value Tsh. 6,000,000/= the property of Simon Helman @ Teza.

According to the record the appellant was convicted on his own plea of guilty and was sentenced serve 15 years custodial sentence and to pay a victim compensation in the tune of Tanzania shillings six million (Tshs. 6,000,000/=).

Dissatisfied by the finding and sentence by the trial court decision, the appellant has preferred this appeal by filing the petition of appeal containing five (5) grounds of appeal as follows;

***1. That, he did not commit the serious offence as claimed by the crown prosecution side.***

***2. That the trial court erred in law point and fact by convicting and sentence the appellant relying on plea of guilty for the appellant while it fail to note 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 by failing to discover that no any cautioned statement which were tendered before the court to prove the allegation.***

***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 te appellant was denied an opportunity to say or dispute or add anything relevant to facts something which whole process to be nullity as per the case of ADAN V. REP [1973] E.A 446***

***5. That the trial court erred in law point and fact by convicting and sentence the appellant for the case which were not proved beyond all reasonable doubts as required by law.***

During the hearing of this appeal, the appellant appeared in person, unrepresented; whereas, Ms. Marietha Magutta, the learned state attorney appeared for the republic respondent.

In his submission in support of the appeal, the appellant prayed for his grounds be adopted and the appeal be allowed.

While Ms Magutta resisted the appeal and supported the both, conviction and sentence. She submitted that as per section 360 (1) of the Criminal Procedure Act, Cap 20 RE 2019 no appeal can be entertained on plea of guilty unless on sentence. The appellant's ground of appeal are on facts and not sentence. There are circumstances where the appellant can appeal. Such circumstances are stated in the case of **Laurent Mpinga** [1983] T LR 166. The appellant's grounds of appeal do not meet the criteria stated in the case. She prayed for the appeal be dismissed.

In rejoinder, the appellant submitted that he was not given right to be heard, the said cattles were not brought in court, nor the complainant. He further submitted that it was his first time to stand in court, thus he was not aware with what was taking place. He prayed his appeal be considered and allowed.

I am aware of the general rule that, an accused person who has been convicted upon his plea of guilty is under section 360 (1) of the Criminal Procedure Act, Cap 20 RE 2019 prohibited to appeal

against conviction but may appeal as to the extent or legality of the sentence.

In this case the appellant's grounds of appeal show that he has not only appealed against sentence or its legality, but also the conviction on the ground that the conviction was against the procedure.

It is a principle of law that, the procedure for plea of guilty is provided under section 228 of the Criminal Procedure Act, Cap 20 RE 2019 which provides that;

*"If the accused 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."*

The court of law as well gave guidelines on what to do before it proceeds to convict the accused on plea of guilty. In the case of **Peter Kombe vs The DPP**, Criminal Appeal No. 12 of 2016, CAT Mbeya, the Court of Appeal quoted with approval the findings of its previous decision in the case of **Burete Peter vs The Republic**,

Criminal Appeal No. 20 of 2010, CAT, unreported which also quoted with approval the decision of the High Court in the case of **Kato vs Republic** [1971] HCD 363 where it was held that;

*The words 'it is true' when used by an accused person may not amount to a plea of guilty, for example, in a case where there may be a defence of self defence or provocation. In such situations therefore, is desirable to record the plea of the accused in a manner envisaged by section 228 (2) of the CPA just quoted above. **Equally important, the facts of the case must be explicit, and must disclose all the necessary ingredients of the charged offence.** They must be read over and explained to the accused person to afford him opportunity to understand the nature of the case against him-See the cases of Joseph Mahona @ Joseph Mboje @ Magembe Mboje vs Republic, Criminal Appeal No. 541 of 2015, CAT, unreported, Adan vs Republic EA. 445 and Hando s/o Akunay vs Republic [1951] 18 EACA 307.*

The Court went further and stated that;

In **Hando s/o Akunay's** case, the East Africa Court of Appeal repeated: -

*Before convicting on a plea of guilty every ingredient of the offence must be explained to the accused and asked to plead. Otherwise, the conviction would be faulted;*

The procedures of taking and recording accused plea were also laid down in the case of **Adan versus Republic** [1973] EA 445 where the Court held thus; -

***"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 then 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 or explain the facts or to add any relevant facts. If the accused does not agree with the statement of facts or asserts additional facts which, if true, might raise a question as to his guilt, the magistrate should record a change of plea to "not guilty" and proceed to hold a trial. If the accused does not deny the alleged facts in any material respect, the magistrate should record a conviction and proceed to hear any further facts relevant to sentence. The statement of facts and the accused's reply must, of course, be recorded." [Underlines added]

When the charge was read over to the accused/appellant and asked to plead he just stated that "Ni kweli nilliiba mifugo hiyo ng'ombe 10 na mbuzi 9"

And the facts of the case were produced thereafter were that;

"That on 8<sup>th</sup> day of September 2021 the accused did steal 10 cows valued at Tsh. 5,400,000/= and 9 goats valued at Tsh.



*600,000/=. That totality valued 6,000,000/= the property of Simon Helaman @ Teza."*

The District Court Magistrate recorded the respond of the accused (appellant) plea to the facts as hereunder quoted; -

*"I have heard all the facts narrated by the prosecutor, that I admit all the facts to be true and correct. It is true I stole 10 cows and 9 goats".*

**NKOMOLA: SIGNED**

Then, the District Court Magistrate convicted and sentenced the appellant according to his own plea of guilty.

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 stealing animals harm contrary to **section 258 (1) and section 268 (1) (3) of the Penal Code, of CAP. 16. RE 2019.** 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;

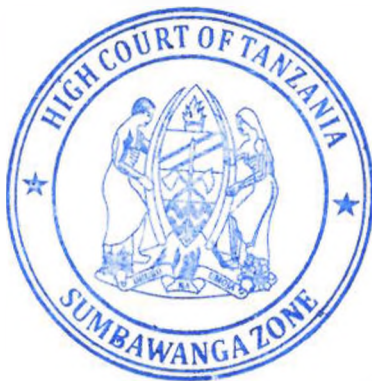
*"If the accused person admits the truth of the charge, his admission shall be recorded as nearly as possible in the words he uses and **the magistrate shall convict him and pass sentence upon or make an order against him,** unless there appears to be sufficient cause to the contrary"* [Underline is 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**  
**20.09.2022**