IN THE HIGH COURT OF TANZANIA

(DAR ES SALAAM DISTRICT REGISTRY)

AT DAR ES SALAAM

CRIMINAL APPEAL NO. 179 OF 2021

(Appeal from the Decision of the District Court of Mafia at Mafia in Criminal Case No. 34 of 2021)

ATHUMAN BAKARI MEJA @ BODDE.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

29th September & 03rd October, 2022

BWEGOGE, J.

The Appellant herein namely, Athuman Bakari Meja was convicted on his own plea of guilty to the counts of house breaking c/s 294 (1) (a) and stealing c/s 258 and 265 respectively of the Penal Code (Cap.16 R.E. 2022). He was sentenced to serve a concurrent imprisonment sentence of five (5) years for the 1st count and twelve (12) months for the 2nd count respectively. The appellant was not amused by the conviction and sentence imposed against him. The same has preferred an appeal in this

court on five (5) grounds of which upon review of this court all boil down to one specific ground that the plea upon which he was convicted, was equivocal.

At the hearing in this court, the appellant had appeared in person and fended for himself whereas the respondent Republic was represented by Mr. Emmanuel Maleko, Senior State Attorney. The appellant had informed this court that he had previously filed his written submission and he had nothing to add thereto. This court has gone through the written submission filed by the appellant in his attempt to substantiate his appeal. In substance, the appellant had conceded to have been convicted in his own plea of guilty. However, he contends that his plea was equivocal and there was a procedural error which invalidates both his conviction and sentence.

The reasons given by the appellant to validate his assertion that his plea was equivocal are as follows: That the appellant had pleaded not guilty to the charges when he was arraigned in court in the first instance. Thereafter the case was adjourned several times before it was set for a preliminary hearing. And before the prosecutor had proceeded with the preliminary hearing, he had prayed to read the charge and, informed the

trial magistrate that the appellant had pleaded guilty on the like charges before another trial magistrate. This statement, in the opinion of the appellant, implied that the prosecutor had predicted his plea of guilty before he was arraigned in court.

Further, the appellant argued that the facts of the case were not read over to him after the trial court entered the purported plea of guilty as per the law of this land. And in validating the assertion that the trial court had committed a procedural error, the appellant charged that the trial court had failed to ask the appellant why he had pleaded guilty and admitted the incriminating fact and, likewise, failed to inform him the consequences of his plea of guilty.

On the above premises, the appellant reiterated his stance that his purported plea of guilty was equivocal and, or ambiguous to warrant his conviction and invited this court to intervene. In the totality of his submission, the appellant had prayed this court to find his appeal meritorious, quash the conviction entered by the trial court and set aside the sentence imposed against him.

On the other hand, Mr. Maleko in replying to the written submission filed by the appellant had at first instance informed this court that he supports

the conviction and sentence entered by the trial court against the appellant. Further, Mr. Maleko had clarified his position mainly on two premises. First, that the appellant had pleaded guilty to the charge when the charge was read to him before the preliminary hearing was conducted. That the record of the trial court of 16th July, 2021 speak volumes that the appellant having pleaded guilty he had given an explanation admitting to have stolen the mobile phone make Samsung after he had broken into the complainant's house. And, the appellant had likewise admitted facts constituting offence which were read and explained to him by the trial magistrate. More so, Mr. Maleko had addressed this court that the law guiding this court in resolving the issue on whether the plea entered by the appellant is equivocal or otherwise is the provision under section 228 of the Criminal Procedure Act (Cap. 20 R.E. 2022).

In tandem with the above, Mr Maleko contended that it is apparent on the record of the trial court that during mitigation, the appellant had given reasons why he had stolen the mobile phone to the effect that his mother was bedridden and in need of money to meet medical expenses. That this explanation, further ascertains the fact that the appellant's plea was unequivocal.

Second, the attorney had bolstered his position by stating that the provision of section 360 (1) of the Criminal Procedure Act (supra), bars appeal emanating from the conviction based on pleas of guilty. That the appellant herein is precluded by law to appeal from his own plea of guilty. And, in closing his submission, the attorney discredited the appellant's contention that he was induced to plead guilty as the record of the trial court doesn't indicate the slightest inference of the alleged fact.

When the appellant was invited to respond to the submission made by the counsel for respondent Republic, he stated that it was the trial magistrate who had induced him to plead guilty on a promise that he would let him walk scot-free from custody, that is why he had pleaded guilty to the charge.

This is all about the submission by the appellant herein and the counsel for the respondent Republic. And, upon scrutiny of the grounds of appeal advanced by the appellant, this court is of the considered opinion that the main issue to be resolved is whether the impugned plea of guilty was unequivocal.

Primarily, this court is on all fours with the counsel for the respondent Republic in respect of the fact that the criminal law of this land bars appeal from the conviction based on the plea of guilty.

The provision of s. 360(1) of the Criminal Procedure Act, aptly provides as hereunder:

> *"360. No appeal on plea of guilty*
>
> *(1.) 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."*

However, this court differs with the counsel for the respondent Republic in respect that the law revisited above is the general rule with the exception under certain circumstances as it was laid down in the case of **Laurance Mpinga vs. The Republic** (1993) TLR 166 whereas it was held:

> *"No appeal shall be allowed in any case of an accused person convicted on his own plea of guilty, except against sentence or an order for the payment of compensation. If the appellant had in fact and in law pleaded guilty to the charge of robbery, then he could not be heard in the District Court to*

complain against his conviction. I say in fact and in law because, as I apprehend the law, an accused person who has been convicted by any court of an offence "on his own plea of guilty" may in certain circumstances appeal against the conviction to a higher court. Such an accused person may challenge the conviction on any of the following grounds:

1. *that, even 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 mistake or misapprehension;*
3. *that the charge laid at his door disclosed no offence known to law and,*
4. *that upon the admitted facts he could not in law have been convicted of the offence charged."*

See also similar view of the Apex Court in the case of **Safari Deemay vs. Republic**, Criminal appeal No 269 of 2011 (unreported).

In expounding the principle in **Laurance Mpinga**(supra) and related cases, the Apex court in **Richard Lionga @Simageni vs. Republic**, Criminal Appeal No. 14 of 2020 [2021] TZCA 671 had this to say:

"For a plea of guilty to be unequivocal and therefore valid, it must pass the test that this Court set in the case of ***Michael Adrian***

Chaki vs. R. *Cr. Appeal No. 339 of 2017 (unreported). In that case, the Court stated:*

> *"...there cannot be an unequivocal plea on which a valid conviction may be founded unless these conditions are conjunctively met: -*
>
> 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 plead to the charge, the charge is stated and fully explained to him before he is 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 Criminal Procedure Act.

4. *The facts 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 the elements of the offence charged".*

[Emphasis added].

Further, the court held:

> *"A careful scrutiny of the above criteria shows that an unequivocal plea of guilty is constituted of two crucial stages of pleading. That is, first, the accused must plead guilty to the charge as indicated at criterial 1, 2, 3 and 5 and, secondly, he must plead guilty to the facts constituting the offence charged as per criteria 4 and 6.*

..... Where an accused pleads guilty to the charge, before conviction, the law is that, the prosecution is duty bound and it must audibly and understandably narrate facts establishing the offence as alleged in the statement and particulars of offence. That is, the prosecution must explain clearly and adequately the circumstances in which and how the offence was committed in specific and intelligible terms. "

The above extracts are the apposite restatement of the law pertain to conviction based on accused plea of guilty. Having explored the law, this court finds it fit to revisit the proceeding of the trial court bearing the appellant impugned plea of guilty. The particular charges placed at the door of the accused person on the relevant date were as thus:

"***1st Count:***

Offence Section and Law*: House breaking c/s 294(1) (a) of the Penal Code Cap. 16 of the Laws R.E. 2019.*

Particulars of Offence*: That ATHUMANI S/O BAKARI MEJA @BODE in the month of October 2020 at Utende area, Kiegani Village, within Mafia District in Coast Region, did break and enter*

into a dwelling house of one HASSANI S/O HAMADI with intent to commit an offence therein termed stealing.

2nd count:

Offence Section and Law: *Stealing c/s 258 and 265 of the Penal Code Cap. 16 of the Laws R.E. 2019.*

Particulars of Offence*: That ATHUMANI S/O BAKARI MEJA @BODE in the month of October 2020 at Utende area, Kiegani Village, within Mafia District in Coast Region, did steal one smart phone make Samsung valued Tshs. 150,000/= property of one HASSANI S/O HAMADI.* **"**

And the relevant proceedings were as follows:

"Date: 16/07/2021

Coram: Hon. H. M. Maroa, RM

For Pros: Insp. Warioba

Accused: Present

CC: Hadija

Prosecution:

For preliminary hearing, I am ready to proceed..... I pray to remind the accused his charge.

***Court**: Prayer granted...,*

Sgd: H. M. Maroa

RM

16/07/2021

Charge read over to the accused person who plead as thus:

***1st Count**: It is true your honour that I did break the house of one Hassan S/o Hamad with intent to commit offence therein.*

***Court**: Entered a plea of guilt (EPG).*

Sgd:

H. M. Maroa

RM

16/07/2021

***2nd Count**: It is true that I did steal one smartphone make Samsung from the house of one Hassan s/o Hamad.*

Court: *Entered a plea of guilty (EPG).*

Sgd: H. M. Maroa

RM

16/07/2021

Prosecution: *Facts are ready, I am ready to proceed.*

Sgd: H. M. Maroa

RM

16/07/2021

FACTS OF THE CASE

That the accused person is Athuman s/o Bakari Meja 26, Ngoni, Muslim, Bus Conductor, A resident of Utende.

That in October 2020 the accused was at Utende area.

That while at Utende, the accused had broken and entered into the house of Hassan Hamad purposely to commit an offence therein.

That the accused in October, 2020 did steal the mobile phone make Samsung valued Tshs.150,000/= the property of Hassan Hamad.

That on 25/05/2021 at about 08:00 hrs, while at Utende, in his residence, he was found with one mobile phone make Samsung the property of Hassan Hamad.

That on 25/05/2021, the accused was taken to the police station for Interrogation.

That on 28/05/2021 the accused was arraigned before the District Court and denied the charge but today on 16/07/2021 the accused pleaded guilty to all two charged counts.....

***Court**: Are the above facts, correct?*

***Accused**: Your honour, the above-narrated facts are very correct that in October, 2020 I did break into the house of one Hassan s/o Hamad and managed to steal one mobile phone make Samsung and on 25/05/2021 I was arrested and found in possession of the stolen property (Samsung mobile phone), I cannot deny, it is true your honour and today I admitted and pleaded guilty, I cannot deny....."*

Further, in convicting the appellant, the record of the trial court entails the following:

***"Court:** The accused person Athuman s/o Bakari Meja is hereby convicted with both two charged counts of the house breaking c/s 294 (1) (a) and stealing c/s 258 and 265 of the Penal Code (Cap. 16 R.E. 2019) on his own plea of guilty in all two charged counts as well as his own admission of the presented facts.....that in October, 2020 at Utende area he had broken into the house of one Hassan Hamad and managed to steal one mobile phone make Samsung and on*

25/05/2021 he was arrested and found in possession of stolen item .....prosecution side proved all the ingredients of the offences clearly."

This court, basing on the glaring record of the trial court, is of the considered opinion that the appellant's plea of guilty at the trial court passes the test enunciated by the Apex court in **Michael Adrian Chaki** (supra) and restated in **Richard Lionga Simageni** (supra) aforecited. It is obvious that the appellant's plea of guilty to the charges met the conditions on item no. 1,2,3 and 5 set forth. The charge levelled at the appellant was proper, the offence, section and particulars properly framed and explicitly disclosed the offence known to law; the charge was fully explained to the appellant before he was asked to plea, and the appellant fully comprehended the charges facing him whereas he had not only admitted the charges but also given the incriminating particulars of his actions at the first instance when he was called to plea.

Likewise, the appellant's admission to the facts adduced which disclosed and established all the offences charged, and the record of the trial court indicates that the trial magistrate had satisfied himself that, without doubts, the appellant's admission to adduced facts disclosed and

established all elements of the offence as per conditions on items no. 4 and 6 in the aforecited cases. In the same vein, the appellant's mitigation to the effect that he had opted to steal to meet her mother's medical needs bolster the fact that the appellant was alive to what was transpiring in court.

This court, basing on the above observation, purchases wholesale the submission made by Mr, Maleko, the Senior State Attorney for the respondent Republic that, the plea made by the appellant at the trial court was nothing but unequivocal. It is apparent that the appellant herein was disillusioned by the draconic custodial sentence he was condemned to suffer and, or advice from the shrewd inmate.

And, this court refuses to purchase the allegation made by the appellant before this court that he was induced by the trial magistrate to plead guilty on the promise that he would be set at liberty thereafter. This court finds no ground to believe that the trial magistrate would venture into the alleged enterprise. The fact that the appellant had averred in one of his grounds of appeal that he was induced by the prosecution to plead guilty before he changed his version and made the same allegation against the trial magistrate reveals that he is liberal with lies.

In the same vein, this court is of the considered opinion that the trial court had no legal obligation to inquire why the appellant pleaded guilty to the charges, neither obliged to inform him the consequences of his plea as he had lamented in this court. As aforesaid, the trial magistrate was legally obliged to satisfy himself that audibly and understandably the narrated facts established the offences as alleged in the statement and particulars of offence and clear and adequate explanation of the circumstances in which and how the offence was committed in specific and intelligible terms was made to the appellant by the prosecution. This court is of the opinion that the trial court had discharged that obligation.

The above observations notwithstanding, this court finds indebted to canvass the last aspect of this appeal pertaining to the validity of the custodial sentence imposed by the trial court. The appellant had refrained to submit specifically on this aspect though his pleading indicates he was aggrieved by both conviction and sentence. The appellant was condemned to suffer a custodial sentence of five (5) years on the 1st count.

It is an applicable principle in criminal law that *"wherever a first offender is concerned, emphasis should always be on the reformative aspect of punishment unless the offence is one of such serious nature that an*

exemplary punishment is required." See **Hattan vs Republic** 1969 HCD No. 234 and **Masanja Charles vs. The Republic** Criminal Appeal No. 219 of 2011 (unreported) Cited in **Yeremia Jonas Tehani vs. Republic,** Criminal appeal No. 100 of 2017[2020] TZCA 65

Likewise, the fact that the accused has pleaded guilty to the charge, is taken to be a factor which a judicial officer presiding over a case should take into consideration when assessing a sentence. The reason is not far to see as it is a clear expression of remorse for alleged criminal wrong. See in this respect, **Xavier Sequeira vs. Republic** Criminal Case No. 4 of 1993, HC DSM (unreported).

It is a glaring fact that the appellant had pleaded guilty on his own volition; there was no previous criminal record of the appellant given by the prosecution, and the trial magistrate didn't opine that the offence is one of such serious nature that an exemplary punishment was required. Thus, taking into consideration of the circumstances of this case, the trial court ought to have exercised leniency. This court finds inclined to borrow a leaf in **Lawrance Mpinga** (supra) that this is such a case "*where justice ought to have been tempered with mercy.*"

This court is of the considered opinion that the custodial sentence imposed on the appellant in respect of the first count should be reduced. The imprisonment term of three (3) years would meet justice of this case. Hopefully, at the end of the custodial sentence, the appellant would have learned a lesson that crime does not pay.

Having so said, this court finds that the appeal herein against conviction based on the appellant's own plea of guilty is devoid of merit. Otherwise, this court finds that the sentence of five years imposed against the appellant in the first count is excessive in the circumstances of this case. Thus, the appellant's jail sentence is hereby reduced to three years.

Appeal partly allowed.

Order accordingly.

DATED at **DAR ES SALAAM** this 03rd of October, 2022.

O. F. BWEGOGE

JUDGE

The judgment has been delivered this 03rd October, 2022 in the presence of Ms. Fidesta Uiso, State Attorney for the respondent Republic and the appellant who is present in person and unrepresented.

Right of appeal explained.

O. F. BWEGOGE

JUDGE