

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE DISTRICT REGISTRY OF BUKOBA)**

AT BUKOBA

CRIMINAL APPEAL NO. 16 OF 2022

(Arising from Karagwe District Court at Karagwe in Criminal Case No. 305/2020)

STEVEN GOLANI.....APPELLANT

VERSUS

THE REPUBLIC.....RESPONDENT

JUDGMENT

Date of Judgment: 28.10.2022

A.Y. Mwenda, J.

Before the District Court of Karagwe at Kayanga, the appellant stood charged for armed robbery contrary to section 287A of the Penal Code [Cap 16 RE 2002]. It was alleged by the prosecution's side that on 8/09/2020 at Mata village, within Karagwe District in Kagera Region, the appellant stole a motorcycle with Registration No. MC 887 CPF make SANYA valued at TZS. 2,200,000/= the property of STADIUS S/O EUSTACH and at or immediately before or after such stealing he used arm to injure the victim in order to retain the said property.

When the charge was read over to him, he pleaded by saying "Ni kweli" meaning it is true. After that the court recorded a plea of guilty and the prosecutor

proceeded to read the facts of the case and having concluded, the court recorded as follows;

"That the memorandum of facts have been read over to the accused who has admitted them."

Accused person and the prosecutor then appended their signature and the court found his plea unequivocal and convicted him accordingly. The appellant was then sentenced to serve a term of thirty (30) years jail imprisonment.

Aggrieved, the appellant has appeared before this court with memorandum of appeal with eleven (11) grounds. In a summary form, the appellant's grounds of appeal attempt to challenge his plea as being equivocal as he alleges he is not fluent in either English or Kiswahili.

When this matter came for hearing, the appellant was found to speak only Kisukuma. This made the court procure the services of an interpreter to assist in translating Kiswahili to Kisukuma and vice versa. One Ms. Victoria Renatus Mpina was then found and sworn to undertake the task.

In his translated submissions by an interpreter from Kisukuma to Kiswahili, the appellant said that he was charged and later convicted and sentence to serve a jail term of thirty (30) years for reasons which were not clear. He said, since he is

not fluent in either English or Kiswahili, he failed follow up the proceedings. He then prayed this appeal to be allowed.

In response to the submissions by the appellant, Ms. Magili, State Attorney who was assisted by Mr. Alex Francis resisted this appeal.

In response to the argument by the appellant that he is not fluent in either English or Kiswahili, the representative of the republic was of the view respondents that when the charge was read over to him he pleaded guilty. Relying on the authority in the case of HALFANI SUDI V. ABIEZA CHIDILI [1998] TLR 527 cited in that case of ONESMO ALEX NGIMBA V. THE REPUBLIC, CRIMINAL APPEAL NO. 157 OF 2019, CAT (unreported) they said that a court record accurately represents what actually transpired in court and it should not be easily impeached.

Further to that, they submitted that, when the facts were read before the trial court, the appellant admitted to them and appended his signature and accordingly he was convicted and sentenced. They said the appellant plea was unequivocal because the six (6) conditions set in the case of ONESMO ALEX NGIMBA V. THE REPUBLIC (supra) were fully met. They then prayed this court to dismiss this appeal.

In his rejoinder, the appellant reiterated to his submission in chief and prayed this appeal to be allowed.

Having summarized the submission from both sides and upon perusal of the records, it is apparent that the appellant was convicted and sentenced upon his own plea of guilty to the charge. Principally, the law precludes lodging an appeal against the conviction which is the outcome of ones plea of guilty. However under peculiar circumstances the court may entertain an appeal against conviction on a plea of guilty. This position has been articulated in various authorities. In the case of ZAWADI MAHWATA V. REPUBLIC, [2017] TLR 67, CAT the court held inter alia that;

"(i) Except as to the extent or legality of the sentence, no appeal is legally permitted on a plea of guilty. There are circumstances, however, under which an appeal on a plea of guilty against conviction can be legally entertained."

(ii) Those circumstances were articulated by the High Court of Tanzania (Samatta, J – as he then was) in LAURENCE MPINGA V. REPUBLIC [1983] T.L.R 166".

While outlining the said circumstances, the court, while citing the case LAURENCE MPINGA (supra) in the case of ZAWADI MAHWATA V. REPUBLIC (supra) held that;

"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 conviction on any of the following grounds;

1. That even taking into consideration the admitted facts, his plea was imperfect, ambiguous or unfished 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 the law; and

4. That upon the admitted facts, he could not in law have been convicted of the offence charged."

As I have stated earlier, the appellant challenges the trial court's findings that his plea is unequivocal while he is not fluent in both English and Kiswahili. I have gone through the trial court's proceedings and failed to see if the appellant was accorded with the services of an interpreter. While in this court, the appellant did not follow the proceedings. He was speaking Kiswahili with difficulties. As a result the court

decided to seek the aid of an interpreter who translated the proceedings from Kiswahili to Kisukuma and vice versa. In a bid to seek guidance regarding the appellant's complaint, this court came across the case of ALFRED BOMANI V. REPUBLIC, [2013] TLR 27, where faced with similar scenario, the court held inter alia that;

*"(iv) It is important that when a case is called on for preliminary hearing, a charge must be read over **in the language he understands**. If the court finds that the accused plea is unequivocal, the prosecution should proceed to narrate the facts of the case forming all the ingredients of the offence which the accused person is charged. Thereafter, the accused should be required to admit or deny every such ingredient."*

In this matter when the charge was read over to the appellant, the record shows he pleaded in Kiswahili by saying "Ni kweli" (it is true). Since the appellant is not fluent in English or Kiswahili, it cannot be said his plea was unequivocal. Again a plea of "Ni kweli" by itself seem to be equivocal. While defining equivocal plea of guilty, the court of appeal in the case of JUMA S/O SELEMANI @ PAUL V. THE REPUBLIC, CRIMINAL APPEAL NO. 394 OF 2016, while citing the case of

ABDALLAH JUMANNE KAMBANGWA V. REPUBLIC, CRIMINAL APPEAL NO. 321 OF 2017 (unreported) held that;

"...an ambiguous or vague plea that is a plea which it is not clear whether the accused denies or admits the truth of the charge. Pleas in such terms as "I admit", "nilikosa" or "that is correct" and the like, though prima facie appear to be pleas of guilty may not necessarily be so. In fact, invariably such pleas are equivocal. It is for this reason that where an accused person replies to the charge in such or similar terms, facts must be given and accused asked to deny or admit them. Only by doing so can a magistrate be certain that accused's plea is one of not guilty or equivocal plea of guilty."

From the foregoing citation it is clear that when there is a vague or ambiguous plea of guilty as it was in the present case, then facts must be given and accused asked to deny or admit them. In this matter, however, when facts were read, the appellant was not asked to give his reply. The recorded shows the Hon. Trial Magistrate recorded as follows, that;

"That the memorandum of facts have been read over to the accused who has admitted them."

Accused's signature: Sgd

P/Prosecutor (sic) signature: Sgd.

Sgd: E.J. Bingasila – RM

02/11/2022."

This type of reply is contrary to the procedures which are set to be followed when accused plead guilt and admits facts read out by the prosecutions. The said procedures were articulated in the case of BAHATI PASTORY @ GWANCHELE AND ANOTHER V. THE REPUBLIC, CRIMINAL APPEAL NO. 133 OF 2015, where the court of appeal while citing with approval the case of ADAN V. REPUBLIC [1973] E.A 445, held inter alia that;

*"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 relevant to sentence. **The statement of facts and the accused's reply must, of course, be recorded.**" [Emphasis added].*

While opposing this appeal the learned State Attorney was of the view that the appellant's plea was unequivocal believing that the conditions set before finding accused's plea as unequivocal as was stated in the case of ONESMO ALEX NGIMBA V. THE REPUBLIC (supra) were met. For ease of reference, I found it prudent to

quote what the court articulated in the said case to see if the learned counsel's argument has substance. In the said case the court held inter alia that;

"In the case of MICHAEL ADRIAN CHAKI V. REPUBLIC, CRIMINAL APPEAL NO. 399 OF 2017 (unreported), this court stated that there cannot be an equivocal plea on which a valid conviction may be founded unless the following 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 CPA;

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 properly recorded and must be clear;

6. Before a conviction on a plea of guilty is entered, the court must satisfy itself without any doubt that the facts adduced disclosed or establish all the elements of the offence charged”.

From the foregoing, the said conditions should conjunctively be met. However in the trial court's proceeding condition no. 3 and no. 5 were not met. This is so because the appellant's plea does not show if he was asked to state whether he admits or denies each and every particular ingredient of the offence.

From the above observations, this court is of the view that the appellant's plea was equivocal and in that regard I nullify, quash and set aside the proceedings,

and sentence passed by the trial court. I also order trial de novo before a different trial magistrate.

It is so ordered.




A.Y. Mwenda

Judge

28.10.2022

Judgment delivered in chamber under the seal of this court in the presence of Steven Golani the appellant and in the presence of Mr. Yusuf Mapesa learned State Attorney for Republic.




A.Y. Mwenda

Judge

28.10.2022