

IN THE HIGH COURT OF TANZANIA

(DISTRICT REGISTRY OF MTWARA)

AT MTWARA

CRIMINAL APPEAL NO. 25 OF 2022

(Originating from Criminal Case No. 80 of 2019 in the District Court of Ruangwa at Ruangwa)

SAIDI AZIZI NAMBUYO.....APPELLANT

VERSUS

THE REPUBLIC..... RESPONDENT

JUDGMENT

Muruke, J.

Said Aziz Nambuyo, was charged at Ruangwa District court for offences of house breaking and stealing properties of Elizabeth Ndetaulwa. He pleaded guilty to all the two counts, thus convicted on his own plea of guilty to the charge. He was sentenced to serve imprisonment term of two years.

Being dissatisfied, he file five grounds of appeal namely,

1. The manner in which the proceedings at the trial Court was conducted was irregular and improper.
2. The Appellant plea of guilty was a result of misapprehension or mistake as he did not understand the nature of plea or offence.
3. The exhibits P1, P2, and P3 were admitted unprocudurally as evidence in Court.
4. No acknowledgement receipt of seizure was issued to the Appellant or tendered to the Court as evidence, c/s 38(3) of the



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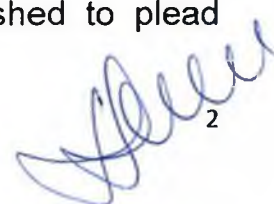
Criminal Procedure Act [Cap 20, R.E 2002] ; so as to prove that the charge was not fabricated against the Appellant.

5. None of the alleged stolen properties was seizure from the Appellant.

On the date set for hearing appellant was in person, thus requested his ground of appeal to be received as his submission in chief reserving right to make rejoinder if need arises. Florence Mbamba State Attorney, represented respondent. On ground one she submitted that, there is no irregularity as complained by appellant. Only that, there is no conviction, trial court just sentenced the appellant. Such irregularity can be corrected by section 388 of CPA Cap 20 R.E 2022.

On the second ground complaint is on plea of guilt. From the records it is clear that, appellant admitted the offence charged and all the facts as read out by prosecutions, there is no any problem. Ground three is on exhibit tendered, but not read in court. Exhibit P2, and P3 were all not properly admitted, thus same need to be expunged from the court records. On ground four and five complaints is exhibits not being found with appellant, more so, no seizure receipt issued. Looking at the proceedings, appellant admitted to commit the offence, insisted learned State Attorney.

In rejoinder, appellant insisted that, three cases were on the same day, criminal cases no 79/2019, 80/2019, and 81/2019. In these cases, the offences were more or less similar. It was not even clear which case was right. It was difficult for him to ascertain proper facts, and counts. He, being a lay person, court ought to have explained in details the charge sheet, and the effects of pleading guilty to all the three cases. On the same time and date. i.e 10/05/2019. He was just pushed to plead without proper plea being taken.



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Having heard both sides, gone through court records, it is worth reproducing section 228 (1) and (2) of the CPA, which governs plea taking. It provides that: -

“(1) The substance of the charge shall be stated to the accused person by the court, and he shall be asked whether he admits or denies the truth of the charge.

(2) Where 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”

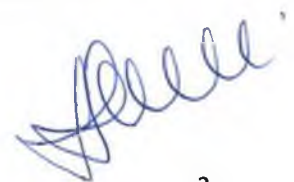
It is settled law that for a plea of guilty to be unequivocal, plea must satisfy the requirements set out in the above section. As found by the trial court, the conditions for an unequivocal plea of guilty were met hence no appeal against the conviction could lie to the court. The appellant can only challenge his guilty plea under certain circumstances as elaborated in the decision of the High Court in Lawrence Mpinga V.R [1983] T. L. R 166 in which Court of Appeal held that:-

“An accused person who has been convicted by any court of an offence on his own plea of guilty, may appeal against the conviction to a higher court 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."

Having exposed the position of the law, it is clear that, appellant will only appeal on conviction, resulted from own plea of guilty, if such conditions existed. Looking at the proceedings of the lower court, there are serious issue to be noted. **One**, at page one, typed proceedings it does not show whether the charge was read to the accused. **Two**, there is no signature of the trial magistrate after facts were recorded. **Three**, there is no conviction entered, trial court recorded as follows at page 4 at typed proceedings

"the accused person is confessed due to his own plea of guilty"

The above three anomalies vitiate proceedings. In a way, appellant has been in prison since 10th May 2019 without being convicted. Appellant was ordered to serve illegal sentence of two years from 10th May 2019. Appellant being serving sentence illegally, conviction quashed, and sentence is set aside. Appellant is thus set free, unless lawful held with other offences.




Z. G. Muruke

Judge

25/11/2022

Judgment delivered in the presence of Enosh Kigoryo Learned State Attorney for respondent and the appellant in person.




Z. G. Muruke

Judge

25/11/2022