IN THE HIGH COURT OF TANZANIA

(DISTRICT REGISTRY OF MTWARA)

AT MTWARA

CRIMINAL APPEAL NO. 26 OF 2022

(Originating from Criminal Case No. 99/2021 Resident Magistrate Court of Mtwara at Mtwara)

KHALED MOHAMED.....APPELLANT

VERSUS

THE REPUBLIC..... RESPONDENT

JUDGMENT

Muruke, J.

Khaled Mohamed (appellant) together with eight others, were charged with several counts, related to immigration laws. Appellant pleaded guilty to two counts amongst others, thus, convicted and sentenced to serve five years' imprisonment, by the Resident Magistrate court of Mtwara at Mtwara.

Being dissatisfied, he has filed present appeal raising four grounds of appeal, namely: -

1. The manner in which the proceedings at the trial was conducted was irregular and/or improper.
2. The Appellant's plea of guilty was a result of misapprehension or mistake as he did not understand the nature of the plea or offence. Being unrepresented the Appellant did not understand clearly the

ingredients of the charge as they were not explained to him. See **Buhimila Mapende vs Republic [1988] TLR 174 and DPP vs Paul Reuben Makujaas [1992] TLR 2.**

- In Asha Said Salum vs Republic, Criminal Appeal No. 7 of 2019 (unreported) where the Court **NGWEMBE J,** quoted the words of **MSUMI J in DPP vs PAUL REUBEN MAKUJAA [1992] TLR 2,** where it was stated;

  "Whenever there is an indication that, the accused intend to plead guilty, Court should take effort to carefully explain to him each and every ingredient of the offence and a plea of guilty should be entered if his reply to such explanation clearly shows that, he understood the nature of the offence and he is without qualification, admitting it"

3. The learned trial magistrate erred in law and fact by not considering the Appellant's of guilty as an essential mitigation factor.
   - The trial Magistrate could give the Appellant a lenient sentence or even acquit him. See the decision and stance of the Court on **Bernadeta Paul vs Republic [1992] TLR 97 and Sylvester Lucas vs Republic, Criminal Appeal No. 67 of 2014, CAT at Dodoma (unreported)**
4. That the learned trial magistrate erred in law and fact for convicting the Appellant on his own plea of guilty relying on the reason that he is conversant with Swahili language.

On the date set for hearing, appellant was in person, thus requested court to adopt his grounds of appeal as his submission in chief, reserving right to make rejoinder, after respondent submission.

Respondent counsel submitted that ground two, three, and four of appeal issue is on a plea of guilt by accused, now appellant. It has been argued that, appellant then accused did not understand the offence on the reason of language, as he is from Comoro. However, at page five of trial court typing proceedings, accused now appellant pleaded guilty to the two offences and refused one offence. This shows that, accused/appellant understood, the offence, when he made two different pleas. Charge sheet was read, and accused pleaded guilt to some offences, denying others. Accused pleaded guilty to the offence and admitted all the facts. So, ground two, three, four lacks merits, as they are all an afterthought, insisted W. Ndunguru, learned State Attorney

Ground one appellant complaint is on irregularity of the trial proceedings. There is no any irregularity. At page **four,** charge was amended and read loudly in court. In which accused now appellant pleaded guilty. In totality let appeal be dismissed. In rejoinder, appellant insisted that, proceedings were confusing and counts were many to all nine (9) accused persons. He is from Comoro; he does not know Swahili in details. Proceedings were in Swahili, he did not understand well proceedings.

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."

From the proceedings of the lower court, it is true that, they are very confusing. Accused were of different nationality. There is nowhere in the trial court records to show that, every accused was asked whether they know Swahili as the language of the court. Appellant being one of the accused there is no where he was asked about the language of the

court. In cases involving foreigners court has to be satisfied that, accused knows the language of the court for him/her to be able to follow proceedings and finally be able to defend himself. This procedure is lacking in the entire trial court records. It cannot be said that, even the plea was proper. To this court, plea of guilt by appellant was a result of mistake or misapprehension of facts.

The above anomalies vitiate proceedings. In a way, appellant has been in prison since 15th November 2021. Appellant was ordered to serve illegal sentence of five years from 15th November 2021. Appellant has been serving sentence illegally. This court cannot leave, illegality to flourish in the court records. Conviction quashed, and sentence is set aside. Appellant is set free, unless lawful held with other offences.

Z. G. Muruke

Judge

30/11/2022

Judgment delivered in the presence of appellant in person and Florence Mbamba, State Attorney for the respondent.

Z. G. Muruke

Judge

30/11/2022