

THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
SUMBAWANGA DISTRICT REGISTRY
AT SUMBAWANGA

DC. CRIMINAL APPEAL NO. 78 OF 2020

(Originating from Criminal Case No. 124/2019 in the District Court of Mpanda at Mpanda)

JUSTIN RICHARD @ KAWANDAMO..... APPELLANT

VERSUS

THE REPUBLIC.....RESPONDENT

Date of Last of Order: 21/10/2022

Date of Judgment: 12/12/2022

JUDGMENT

NDUNGURU, J.

The appellant herein was arraigned before the District Court of Mpanda at Mpanda for two counts, first being stealing contrary to Section 258 (1) and 265 of the Penal Code [Cap. 16 R.E 2002 before its amendment in 2019] and the second count in alternative being in possession of goods suspected of having been stolen contrary Section 312 (1)(b) of the Penal Code [Cap. 16 R.E 2002 before its amendment in 2019].

It was alleged by the prosecution side that it was on the 17th day April, 2018 on or about 19:30 hours at Makanyagio area within Mpanda

Municipality in Katavi Region did steal one motor cycle with Registration number MC463 APK SAN LG, red in color with engine number 14979299 and chassis number LBRSPJB53F9000996 valued at Tshs. 2,200,000/= the property of Joel Mbalazi.

It was also alleged that on the 20th day of July, 2018 at Kashaulili area within Mpanda Municipality in Katavi region, the appellant was found in unlawful possession of one Motor Cycle with Registration number MC463 APK SAN LG, red in color with engine number 14979299 and chassis number LBRSPJB53F9000996 valued at Tshs. 2,200,000/= the property which having regard to all the circumstances, be reasonably suspected of being stolen.

During trial the appellant denied all the charges laid against him, but after full trial, he was found guilty, convicted and sentenced to serve a term of three years imprisonment. In that, the appellant was dissatisfied with both the conviction and sentence and hence decided to appeal to this court whereas his Petition of Appeal bared four (4) grounds of appeal which are extracted hereunder;

1. That, the said copy of proceedings has defects on dates since the case commenced on the 18th September, 2018 but the case was registered a year after the commencement of the case 2019.
2. That, the exhibits were wrongly tendered and admitted since they were not tendered with proper witness.

3. That, exhibit P1 was not read out in the manner prescribed by admission of exhibits procedure.
4. That, the appellant was not made to understand the charge against him since no formal complaint is found in the typed copy of the proceedings.

As the matter was scheduled for hearing, the appellant represented himself meaning he had no any legal representation, while the respondent was represented by Mr. John Kabengula learned State Attorney.

When the appellant was invited to submit in support of his grounds of appeal, he submitted that he has filed a petition of appeal which consists of four grounds, but however decided to argue on the 4th ground that he did not understand the charge although it appears that he pleaded guilty. In that, prayed for this court to allow his appeal.

On the other hand, Mr. Kabengula submitted that the appellant chose to argue on the 4th ground of appeal alone. He added that it is very clear that when the charge was read to the appellant on the first date, he denied the charge and the investigation continued. As it was completed, a preliminary hearing was scheduled and conducted and thereafter a hearing date was fixed.

Mr. Kabengula continued that, on the fixed date the charge was reminded to the appellant and he pleaded guilty. Therefore, what is being alleged by the appellant is just an afterthought. The learned State Attorney

added that, the appellant even admitted the facts adduced in court. And therefore, Mr. Kabengula prayed for this court to dismiss this appeal.

In rejoinder, the appellant prayed for this court to consider his grounds for appeal and allow the appeal.

After going through the submissions from both sides, the issue to be determined by this court is ***whether the appellant's plea was unequivocal*** as he chose to argue on the 4th ground alone.

To discern whether the plea of guilty was unequivocal, I need to look at the facts the appellant accepted as true:

"FACTS OF THE CASE"

That on the 17th/04/2018 at 19:30 hours at Makanyagio, the Motorcycle MC 463 APK make SAN LG the property of Joel s/o Mbalazi was stolen. That, the matter was reported to Mpanda Police Station. On the 17/07/2018 the accused arrived at TRA offices at Katavi with a mission of transferring ownership if od the said Motorcycle. That the TRA officer Joyce Mapunda went through the records and discovered that, the same was owned by Joel Mbalazi, who arrived and met the accused there. That, the accused person was taken to Mpanda Police station. That while at Mpanda and when interrogated, he informed the police officers the where abouts of the Motorcycle, hence asked his relatives to bring it. That, on 20/07/2018 the Motorcycle was brought, and was seized from the

accused. We pray to tender the certificate of seizure as exhibit in this case

Accused: I have seen the Certification of Seizure. It has my signature, I have no objection.

That's all.

Court: Certificate of Seizure dated 20/07/2018 is admitted and marked exhibit P1.

Exhibit P1 read in court by State Attorney.

*Sgd: E. L. Ngigwana
RM
13/11/2018*

SA: We also pray to tender the Motorcycle MC 463 APK Sanlg together with its Registration Card.

Accused: I have no objection at all because it is the Motorcycle which I stole.

Court: Motorcycle Registration MC 463 APK make Sanlg red in color is admitted and marked as exhibit P2, while its Registration Card No. 7113871 barring the name of JOEL MATHEW MBALAZI is admitted and marked as exhibit P3.

*Sgd: E. L. Ngigwana
RM
13/11/2018*

That, the accused was arraigned before this court at first he denied the charge but today, he prayed to be reminded the charge and

changed his plea to that of guilty.

That's all.

Reply from the Accused

I have heard the facts read and explained to me. I do admit all the facts to be true. I did steal the said Motorcycle and I was arrested while on the process to change ownership from Joel Mathew Mbalazi to my name.

That's all.

Accused: Signed

SA: Signed

Court Clerk: Signed

*Sgd: E. L. Ngigwana
RM
13/11/2018*

Court Findings

The accused person has today, 13/11/2018 when the matter was called for hearing, prayed to be reminded the charge and he changed his plea from that of not guilty to that of guilty. The facts were then read and explained to him and he admitted all the facts to be true, that he stole the Motorcycle and the same was finally found in his possession, thus unequivocal plea. The accused is hereby found guilty and convicted accordingly upon his own plea of the offence of stealing contrary to section 258 (1) and 265 of the Penal Code Cap 16 R. E. 2002.

Sgd: E. L. Ngigwana
RM
13/11/2018

SA: We have no previous criminal records of the accused person, but we pray for a stiff punishment as a lesson to the accused but also a warning to other persons of the same habit.

Mitigation

-I pray for court mercy. I am first offender.

-I have a family depending on me

-My father has divorced my mother; therefore, we are in trouble.

That's all.

I have quoted the proceedings of the trial court to illustrate that the appellant pleaded guilty to the charge, accepted the prosecution facts as true and signed, and in mitigation, the appellant pleaded that he is a first offender, he prays for the court's mercy and that he has a family that depends on me.

In this regard, the appellant having pleaded guilty to the charge, he only has a right to appeal against the sentence as stipulated under the provisions of section 360 (1) of the Criminal Procedure Act, Cap 20 R.E. 2019. This fact was well stressed in the case of **John Samwel @ Kabaka and Another versus Republic, Criminal Appeal No. 58 of 2005**, (unreported) where the Court of Appeal of Tanzania considered an appeal on a plea of guilty and observed that —

The appellants' plea being unequivocal, they were correctly convicted on their own plea of guilty. It would follow that no appeal would lie on a plea of guilty

In this case, the appellants having been convicted on their unequivocal plea of guilty cannot now be heard to complain about the conviction

As reflected above, the appellant pleaded guilty to the charge and did not dispute the prosecution facts in support of the offence of stealing as he was charged. He neither challenged the legality or length of the sentence imposed on him as prescribed by the law under Section 360 (1) of the Criminal Procedure Act Cap. 20 R. E. 2019.

In that manner, I am satisfied that the appellant was rightly convicted on his own unequivocal plea of guilty and in that he pleaded guilty to the charge and also accepted the prosecution facts in support of the charge of stealing contrary to Section 258 (1) and 265 of the Penal Code Cap. 16 [R.E. 2019].

Nevertheless, I find it judicious to caught with approval the holding affirmed by the Court of Appeal of Tanzania in the High Court case of **Laurent Mpinga versus Republic [1983] TLR 166** in which the High Court pronounced the criteria for interfering with a plea of guilty namely:

- 1. That even taking into consideration the admitted facts, the 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 the appellant pleaded guilty as a result of mistake or misapprehension;*
- 3. that the charge laid at the appellant's door disclosed no offence known to law; and*
- 4. that upon the admitted facts the appellant could not in law have been convicted of the offence charged.*

To this juncture, I am fortified that in this present appeal, the prosecution facts constituted the offence of stealing contrary to section 258 (1) and 265 of the Penal Code, Cap 16. I am also satisfied that the appellant pleaded guilty unequivocally because he accepted the prosecution facts as true. He, furthermore, pleaded in mitigation that he is a first offender and prays for the court mercy as he as a family that depends on him. In this respect, I find that the ground that he was not made to understand the charge against him since no formal complaint was found in the typed copy of proceedings, was just a mere afterthought.

Consequently, I find this appeal being meritless. I therefore proceed to dismiss it, and the decision and sentence of the trial court

are hereby upheld.

It is ordered accordingly.




D. B. NDUNGURU

JUDGE

12/12/2022

ORIGINAL