

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

SUMBAWANGA DISTRICT REGISTRY

AT SUMBAWANGA

DC. CRIMINAL APPEAL CASE NO. 84 OF 2022

(Originating from District Court Kalambo in Criminal Case No. 130/2021)

PATRICK S/O KIPATU APPELLANT

VERSUS

THE REPUBLIC.....RESPONDENT

15/11/2022 & 13/12/2022

JUDGMENT

MWENEMPAZI, J:

The appellant was charged in the Trial Court with two counts, the first is the offence of House Breaking Contrary to Section 294(1) (a) and the second count is the offence of Stealing Contrary to Section 265 of the Penal Code, Cap 16 R.E 2022. In the trial Court, it was alleged for the first count that on the 11th October, 2021 at about 16:30 hours at Kateka Village within Kalambo District in Rukwa Region the accused did break a house of REGINA D/O MSANGAWALE with intent to commit an offence termed stealing. In the second count, it was alleged that on the 11th October, 2021 about 16:30



hours at Kateka Village within Kalambo District in Rukwa Region, the accused (appellant) did steal one TV made Sundar 17 Inch with total value of Tshs. 200,000/= the property of REGINA D/O MSANGAWALE.

When the charge was read over and explained to the accused person he admitted and the Court recorded a plea as follows:

"1st count: *Accused's plea: It is true that I did break the house of Regina s/o Msangawale with intent to commit an offence of stealing.*

2nd count: *Accused's plea: It is true that I stole one television made sundar 17 inches the property of Regina d/o Msangawale.*

Court: *Entered as a plea of guilty to all two (2) counts by accused person.*

Sgd: R.M. Rugemalira – SRM

27/10/2021".

The next day the case was called for reading facts under section 192 of Criminal Procedure Act, Cap 20 R.E 2022, whereby the accused, upon being asked on the correctness of facts adduced, he stated as follows: -

"Your honour, all facts adduced are true and I admit them".

The Court reached to the finding that the accused is guilty of the offence of House Breaking Contrary to Section 294(1) (a) and that of Stealing Contrary to Section 265 of the Penal Code, Cap 16 R.E 16 2019 and convicted him with both offences. Thus the conviction was based on his own plea of guilty to the charges.

The appellant has appealed against conviction and sentence and raised six grounds of appeal. Basically, the grounds of appeal may be summarized that the appellant is faulting the trial Court by convicting him and sentencing him basing on a plea of guilty, alleging that there was failure to comply with section 228(2) of the Criminal Procedure Act, Cap 16 R.E 2022 and for the argument he has cited the case of **Kobra s/o Ernest Vs. The Republic, Criminal Appeal**. The appellant also alleged that at the time of plea he was not normal as he had stayed in the lock up for seven (7) consecutive days. Moreover, he is the first offender.

The appellant is also alleging that he was denied an opportunity to say or add anything relevant to the facts. And finally he is of the view that the prosecution case was not proved beyond reasonable doubt.

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At the hearing of the appeal, the appellant was not represented. He reiterated the contents of the petition of Appeal as summarized. The respondent Republic was being represented by Mr. John Kabengula, Learned State Attorney. He submitted that they are opposing the appeal. The Counsel submitted that according to section 360(1) of the Criminal Procedure Act, Cap 20 R.E 2022, No appeal is 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.

The proceedings show the appellant pleaded unequivocally and the charge was understood by the appellant. The law section 228(2) of Criminal Procedure Act prescribes how a plea should be recorded. It provides that:

"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".

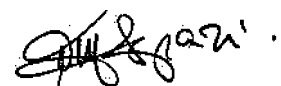
The Counsel cited the case of **Richard Liong'a Vs. The Republic**, Criminal Appeal No. 14 of 2020, Court of Appeal of Tanzania at Dar es



Salaam for the argument that all the ingredients of a plea of guilty were observed as were listed in the case of **Michael Adrian Chaki Vs. The Republic**, Criminal Appeal No. 379 of 2017 (Unreported) that:

"...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 the 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.*

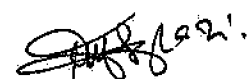


4. *The facts adduced after recording a plea of guilty should disclose and establish all the elements of the offence.*
5. *The accused must be asked to plead and must actually plead guilty to each and every ingredient of the offence charged and the same must be properly recorded and must be clear (see **Akbarali Danji Vs. Republic, 2 TLR 137** cited by the Court in **Thuway Akuonary Vs. Republic, [1987] TLR. 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.*

The Counsel submitted that the facts in this case disclosed the offences the accused (appellant) is charged with and the sentence issued is not illegal. He prayed the appeal be dismissed.

In rejoinder the appellant reiterated the contents of the petition of appeal and submitted that he prays the appeal be allowed.

I have read the record of the trial Court. The appellant (accused in the trial Court) was so categorical in his plea to show that he clearly understood the charges facing him. The facts also when they were read



over to him and explained to him, show that the appellant had opportunity to have the offences clarified to him; and his plea carried a detailed explanation.

Before charges were read over to him and explained, the appellant had already admitted in the caution statement and extra judicial statement that he broke into the house of Regina d/o Msangawale and stole a television make sundar 17 inches. The said caution statement and extra judicial statement were also admitted as exhibit P3 and P2 respectfully. The two documents contain the details how the offences were committed. There is no doubt the appellant had sound mind and he knew what he stated.

As to the sentence, I find the Court was so considerate and issued a fair enough sentence by exercising its discretion as provided by law. The appellant was sentenced to serve a term of four (4) years imprisonment instead of fourteen (14) years for house breaking and three (3) years instead of seven (7) years for stealing. I see no valid reason to fault conviction and sentence issued given that the trial Court exercised its discretion according to the law.


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Under the circumstances, I find the appeal is without merit and proceed to dismiss the same.

It is ordered accordingly.

Dated at Sumbawanga this 13th December, 2022.




T.M. MWENEMPAZI
JUDGE
13/12/2022

Right of further appeal explained.




T.M. MWENEMPAZI
JUDGE
13/12/2022