

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(SUMBAWANGA DISTRICT REGISTRY)

AT SUMBAWANGA

DC. CRIMINAL APPEAL NO. 88 OF 2022

(Originating from Criminal Case No. 131 of 2021 of Kalambo District Court)

PATRICK KIPATU.....APPLICANT

VERSUS

THE REPUBLIC..... RESPONDENT

JUDGMENT

Date of Last Order: 15/11/2022

Date of Judgement: 14/12/2022

MWENEMPAZI, J.:

The appellant was convicted on his own plea of guilty in Kalambo District on the 28th day of October, 2021 before Hon. R. M. Rugemalira-SRM where he was arraigned for two counts. The first count was house breaking contrary to Section 294 (1) (a) and (2) of the Penal Code Cap. 16 R. E. 2019 and the second count was Stealing contrary to Section 258 (1) and (2) (a) and 265 of the Penal Code Cap. 16 R. E. 2019.

At the trial Court, the prosecution side alleged that it was on the 25th day of October, 2021 at about 09:00 hours at Kateka Village within Kalambo District in Rukwa Region, the appellant did break the house of one Isaya Mecha and stole one Television Set made Aborder 32 inches and a flash disk both total

valued at TShs. 360,000/=. As the charge sheet was read to the appellant, he plead guilty, and the court entered the plea of guilty whereas he was convicted and sentenced to serve a term of five (5) years for the 1st count and a term of four (4) years for the second, but both sentences were ordered by the court to run concurrently.

Despite being convicted and sentenced over his own plea of guilty, still the appellant was aggrieved by the decision of the trial court and hence filed this appeal to this court whereas his Petition of Appeal consists of six (6) grounds which are as follows hereunder;

1. That, he did not the serious offence as claimed by the prosecution side.
2. That, the Trial Magistrate erred in law of point and fact by convicting and sentencing the appellant relying on plea of guilty of the appellant while he failed to record exactly the word used in plea, refer Pg. No. 01 of the Proceedings, something which is contrary to Section 228 (2) of the Criminal Procedure Act, the appellant referred this court to the case of **Kobra Ernest vs Republic, Criminal Appeal No. 50 Of 2018 H/C of Sumbawanga** (Unreported).
3. That, the Trial Magistrate totally wronged in law point and fact by convicting and sentencing the appellant relying on the plea of guilty by the appellant while at the time of reading the charge he was not normal in psychology since he stayed in the police lock up for almost seven days.

4. That, the Trial Court erred in law point and fact to convict and sentence the appellant basing on the plea of guilty by the appellant and not taking into consideration that it was his first time to stand in court.
5. That, the Trial Magistrate totally erred in law, point and fact by convicting the appellant relying on his plea of guilty while he was denied the opportunity to say or dispute or add anything in relevance to the facts something which renders the whole proceedings to be a nullity, he referred this court to the case of **Adan vs Republic (1937) EA 445** at page 446.
6. That, the Trial Court totally erred in both conviction and Sentence for the appellant while the case against the appellant was not proved beyond all reasonable doubts.

As per the above grounds of suggest that the appellant is unsatisfied with the decision and sentence of the trial court, he therefore prays for this court to allow his appeal and quash the conviction and sentence of the trial court, and he be set at liberty for he believes he has not done the serious offence.

During the hearing date, the appellant had no legal representation and that he stood for himself meanwhile the respondent was represented by Ms. Marietha Maguta learned State Attorney.

The appellant was invited first to submit for his grounds of appeal, in

doing so, he submitted that he has filed six (6) grounds of appeal and he will read them in swahili. He insisted that the case was a surprise to him, as he was called by the police officer who was his customer as the appellant is a 'bodaboda' driver. He was then apprehended, arrested at the police station where he was beaten and was told to admit or else, he will be tortured further. He added that, he therefore admitted and then he was taken to court where charges were read over to him and explained.

Responding to the appellant's submissions, Ms. Maguta started by submitting that they don't support the appeal and as per the six grounds of appeal as filed by the appellant, the main reason is unequivocal plea. She added that, according to Section 360 (1) of the Criminal Procedure Act, Cap 20 R. E. 2019 (CPA) on appeal on plea of guilty except against sentence. She proceeded that in the proceedings at Page 1 shows that the appellant pleaded guilty and added the details in his plea, and also at page 3 and 4, the appellant did not object to the tendering of the exhibits.

Ms. Maguta submitted further that under Section 228 (2) of the CPA explains the procedure where the accused person pleads to the commission of the offence. She said, at page 1 of the proceedings shows that the words which were recorded by the court. And therefore, she insisted that all reasons for appeal raised are not meritorious, and that they are all afterthought. Ms. Maguta concluded that, the trial Magistrate is a neutral person who had no any interest

and was able to observe the demeanour of the appellant, and therefore the appeal has no merit that they pray for it to be dismissed.

In rejoinder, the appellant submitted that the plea was not recorded in the words used by him. He added that in the proceedings it was recorded in English and not swahili. He submitted further that psychologically he was unable to understand the nature of the proceedings due to pain after being beaten, and that he could not understand the nature of what he was saying, he prayed for his appeal to be allowed.

As I have gone through the submissions from both camps, as suggested by the learned State Attorney, the grounds of appeal as filed by the appellant are wrapped on the point of his plea of guilty being equivocal and not unequivocal. Therefore, the main determinant feature in this appeal would be ***whether the appellant's plea was unequivocal.***

In **Adan vs Republic [1973] EA 445** as approved by the Court of Appeal in **Khalid Athumani vs R. [2006] TLR 79** it was held 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 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 legal 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 facts relevant to the sentence. The statement of facts and accused's reply must, of course, be recorded"

In dealing with this appeal specifically at the juncture where the appellant gave his plea, I find it wise to reproduce an extract of the trial court's proceedings to illustrate which is as hereunder;

PROCEEDINGS

Date 27/10/2021

Coram: Hon. R. M. Rugemalira-SRM

PP: A/Insp. M. G. Waryoba

Accd: Present

C/C: *Adelaida Bonifasi*

Court: *Charge read over and fully explained to the accused person who is asked to plead thereto: -*

1st COUNT

Accused's plea: *It is true that I did break the house of Isaya s/o Mecha with intent to commit an offence of stealing*

2nd COUNT

Accused's plea: *It is true that I stole one Tv made Aborder 32 inches and one falsh, properties of Isaya s/o Mecha*

Court: *Entered as plea of guilty in both counts.*

Sgd: R. M. Rugemalira-SRM

29/10/2021

**READING OF FACTS CONDUCTED UNDER SECTION 228(2)
OF THE CRIMINAL PROCEDURE ACT [CAP 20. R. E. 2019]**

Facts of the Case

Prosecutor

That the accused is Patrick s/o Kipatu, 24 years, Fipa in tribe, peasant, Christian and a Resident of Lyowa village in Kalambo District in Rukwa Region.

That on the 25/10/2021 at 9:00 hours the accused was at Kateka village in Kalambo District in Rukwa Region.

That the accused did break the house of Isaya s/o Mecha with intent to commit the offence of stealing. That after breaking the house and entering inside that house, accused stole one Television made Aborder 32 inches and one flash all total valued at TShs. 360,000/= properties of Isaya s/o Mecha.

That the accused was arrested and brought to Matai Police Station. He was interrogated by Police Officer with No. WP 3321 D/SGT Anna and accused admitted to commit the alleged offences.

On 26/10/2021, the accused was brought before the justice of peace Hon. Suzan MKinga-RM of Matai Primary Court and accused confessed to commit all offences of house breaking and stealing before that justice of peace. I pray to tender one television made Aborder 32 inches, one flash, certified copy of Extra Judicial Statement and Cautioned Statement since the original has already been tendered in another case (Criminal Case No. 130 of 2021)

Accused: *I don't have an objection for tendering those exhibits*

Court:

- (a) One Tv made Aborder 32 inches is admitted as exhibit and marked as Exhibit P1*
- (b) One Flash is admitted as exhibit and marked as Exhibit P2*
- (c) Certified of Extrajudicial Statement is admitted as exhibit*

and marked as Exhibit P3

(d) Cautioned Statement of accused (Certified copy) is admitted as exhibit and marked as Exhibit P4.

That is all.

Court: *Accused person is asked on correctness of adduced facts and state as follows:-*

Accused: *Your honour, all facts are true and I admit them.*

Sgd: Accused person

Sgd: Prosecutor

Sgd: R. M. Rugemalira-SRM

28/10/2021

COURT FINDING

From facts adduced by Public Prosecutor and admitted by the accused, this court find that the accused namely Patrick s/o Kipatu guilty with both two (2) counts charged and is hereby convicted.

He is convicted under Section 294 (1) (a) and (2) of the Penal Code, with the offence of house breaking. He is also convicted under Section 258 (1) and (2) and Section 265 of the Penal Code with the offence of stealing.

Accused is convicted through his plea of guilty.

Sgd: R. M. Rugemalira-SRM

28/10/2021

PREVIOUS RECORDS OF ACCUSED

Your honour, the accused is recidivist, he has been convicted today by this District court with the offence of house breaking and stealing in criminal case No. 130 of 2021. I pray for this court to inflict harsh punishment to him.

That is all

MITIGATION OF ACCUSED (CONVICT)

Your honour, I pray for mercy since I have a child who depend on me. That is all.

The above extract of the trial court's proceeding reveals that the appellant's plea was not unequivocal at all. After the charge was read over, he was asked to plead thereto and he did by stating that it is true and he even insisted in detail that, it is true he did the offence. In addition to that, when the facts of the case were read to him, again he admitted all facts to be true and together with that, he never objected the tendering in evidence of any of the exhibits.

In mitigation, the appellant stated that he prays for the court's mercy and that he has a child who depends on him. At this juncture he would have introduced the fact that he pleaded guilty either due to severe beatings he received or rather due to language barrier that he does not understand English

language or even he has not psychologically well throughout the proceedings, but he did not introduce any of the reasons that he has now as his appeal. Therefore, knocking on the doors of this court suggesting that he was beaten and he could not understand the charge against him due to the state he was psychologically, to me these reasons are merely afterthoughts.

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 vs 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...."

In that manner, I am satisfied that the appellant was rightly convicted on his own unequivocal plea of guilty whereas the plea of guilty was against the offences as charged. 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 vs 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.*

It is my holding that the appellant had unequivocally pleaded guilty to the two counts laid against him in the trial court. I am also fortified that the appellant was correctly convicted and sentenced by the trial court over the two counts he was charged with at the trial court, and in that I find no sufficient reason to fault the trial court in this matter. Consequently, I declare this appeal devoid of merits and in that, I proceed to dismiss it in its entirety.

It is so ordered.




T.M. MWENEMPAZI
JUDGE
14/12/2022