

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF MBEYA
AT MBEYA
CRIMINAL APPEAL NO. 153 OF 2022

(Originating from Criminal Case No. 04 of 2022 in the District Court of Chunya at Chunya)

Bilieli Patrick.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGEMENT

Date of last Order: 28.11.2022

Date of Judgment: 21.12.2022

Ebrahim, J.:

The appellant herein was convicted and sentenced to a term of five years' imprisonment on his own plea of guilty. He was charged with the offence of theft contrary to **section 258(1)(2) and 265 of the of the Penal Code Cap 16 RE 2019 (now 2022)**.

It was prosecution case that the appellant herein had on or about 1st day of May, 2021 at Chokaa Village within Chunya District and

Mbeya Region, stole a motorcycle with registration number **MC 169 CER** make BLAST 150 MB, the property of Ezekiel Hoba.

When the appellant appeared for the first time in court to answer the charges levelled against him, he pleaded guilty that he stole a motorcycle at Chokaa area in Chunya. After the facts were read over to him and the appellant admitted them, the trial court proceeded to find the accused person guilty on his own plea of guilty, convicted him and consequently sentenced him to five years' imprisonment.

Aggrieved, the appellant preferred the instant appeal raising four grounds of appeal claiming that the motorcycle was not tendered therefore the plea was not complete and that he was not given the chance to explain by his own words. He also complained that the sentence was excessive.

At the hearing of this appeal, the appellant appeared in person, unrepresented whereas the republic was represented by Mr. Baraka Mgaya assisted with Ms. Anastazia Elias, both learned State Attorneys.

The appellant prayed to adopt his grounds of appeal and for the court to consider them.

Submitting against the grounds of appeal, Mr. Mgaya narrated the facts pertaining to the proceedings of 19.01.2022 where the appellant pleaded guilty and that according to fact no. 3 as read by prosecution side, the appellant pleaded guilty that on 01.01.2021, he stole a motor vehicle with **Reg No. MC 169 CER-Make Blast** which was parked outside the house of the victim. He explained further that the appellant also admitted the fact that he was arrested at Itumbi hamlet on 12.02.2022 and taken to Chunya police and admitted the offence. He argued that the facts were explained to the appellant in Kiswahili language and he admitted the correctness of the same. He argued also that the facts explained the ingredients of the offence and he referred to the case of **Richard Lionga @ Simageni Vs R**, Criminal Appeal No.14/2020 (CAT-Dar Es Salaam). Referring to the principle set in the cited case, he said once the appellant pleaded guilty, the republic had no duty to tender exhibits or call witnesses. He prayed for the appeal to be dismissed because the sentence imposed was

correct in terms of **section 258** read together with **section 265 of the Penal Code**.

The appellant had nothing to add on rejoinder.

The position of the law i.e., **Section 360 (1) of the Criminal Procedure Act, Cap 20 R.E 2022 (CPA)** disallows appeals against conviction where such conviction was a result of the appellant's own plea of guilty save for the extent or legality of the sentence. For easy of reference, the section reads:

"360 (1) No appeal shall be allowed in the case of any accused person who has pleaded guilty and has been convicted of such plea by a subordinate court except as to the extent or legality of the sentence"

The above notwithstanding, in applying the above estoppel against the appellant, it must first be established that the plea was unequivocal. In different occasions, this court and the Court of Appeal has highlighted the circumstances under which an appeal on plea of guilty against conviction may be allowed. **In Lawrence Mpinga v. Republic (1980) TLR 166** it was held that:

"An accused person who had been convicted by court of an offence on his own plea of guilty, may appeal against the conviction to a higher court on the following grounds:

1. *That 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 a mistake or misapprehension;*
3. *That the charge laid at his door disclosed an offence not known to law; and that upon the admitted facts, he could not in law have been convicted of the offence charged."*

That being the position of the law, the issue for consideration is whether from the facts as reflected from the record of the trial court, the appellant unequivocally pleaded guilty to the charge. In answering the issue as posed above, my reliance shall be confined in the conditions set in the case of **Michael Adrian Chaki V. Republic** (supra). In that case the Court of Appeal of Tanzania set conditions which must be conjunctively met for a valid conviction to be found on an unequivocal plea. These conditions are as follows:

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 an accused fully*

comprehends what he is actually faced with, otherwise injustice may result.

3. When the accused is called upon to plea to the charge, the charge is stated and fully explained to him before he 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 CPA.
4. The fact adduced after recording a plea of guilty should disclose and establish all the elements of the offence charged.
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 Damji vs R.** 2 TLR 137 cited by the court in **Thuway Akoonay vs Republic** [1987] T.L.R. 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 elements of the offence charged."

The proceedings on record show that on 19.01.2022 the following proceedings were recorded in court to reflect what transpired thereof:

"PP: Damas Chonya for Republic. Accused person appeared in person. This is a fresh case. I pray to read out the charge against accused.

Court: Charge read over and explained to the accused person in Kiswahili language to which he understand and pleads thereto:

Accused Reply: *"Ni kweli niliiba pikipiki hiyo maeneo ya Chokaa Chunya"*

Sgd. J.J. Mhanusi – RM

19/02/2022

Court: Accused person entered a plea of guilty to the charge.

Sgd. J.J. Mhanusi – RM

19/02/2022

PP: I pray to continue with the facts.

Accused: I am ready for the facts.

FACTS

(Under section 228(2) of the Criminal Procedure Act, CAP 20 RE 2019)

PP: I pray to tender the typed facts be admitted to form part of the court proceedings.

Court: The prayer is granted and the typed facts received admitted and adopted to form part of this court proceedings.

Sgd. J.J. Mhanusi – RM

19/02/2022

That, the accused person stand charged with the offence of theft contrary to section 258(1)(2) and 265 of the Penal Code, Act, [CAP 16 RE 2019].

That, particulars of accused person is as reflected in the charge sheet.

That, on 01st May, 2021 during night time accused person went to victim's home at Chokaa village.

That, on the material date accused person did steal one motorcycle registered number MC 169 CER make BLAST 150 while it was parked outside the house by Ezekiel s/o Hoba.

That, accused person after stealing he run away with the said motorcycle.

That, victim reported the incidence at Chunya police station.

That on 12th day of January, 2022 accused was arrested with the said motorcycle by villagers at Itumbi hamlet within Chunya District and Mbeya Region.

That, after being arrested he was sent to Chunya police station where he was interrogated.

That, during interrogation accused admitted to have committed the said offence.

Sgd. J.J. Mhanusi – RM

19/02/2022

PP: I pray to read out the typed facts against accused person.

Court: The prayer is granted and the typed facts read out and explained to accused person in Kiswahili language he understand.

Sgd. J.J. Mhanusi – RM

19/02/2022

Court: I asked accused person as to whether the typed facts read over and explained to accused person are true, correct and he admits them all?

Accused: "All facts read over and explained to me are true, correct and I admits them all".

Accused signature xxxx

PP' signature xxxx

Sgd. J.J. Mhanusi – RM

19/02/2022

PP: That is all.

Sgd. J.J. Mhanusi – RM

19/02/2022

Court: Section 228(2) of the Criminal Procedure Act, [CAP 20 RE 2019] complied with.

Sgd. J.J. Mhanusi – RM

19/02/2022"

Moreover, **sections 258 (1)(2)(a) and 265 of the Penal Code** reads as follows:

258.-(1) A person who fraudulently and without claim of right takes any thing capable of being stolen, or fraudulently converts to the use of any person other than the general or special owner thereof anything capable of being stolen, steals that thing.

(2) A person who takes or converts anything capable of being stolen is deemed to do so fraudulently if he does so with any of the following intents, that is to say–

(a) an intent permanently to deprive the general or special owner of the thing of it;

265. Any person who steals anything capable of being stolen commits an offence of theft, and is liable, unless owing to the circumstances of the theft or the nature of the thing stolen, some other punishment is provided, to imprisonment for seven years.

I have extensively reproduced the proceedings of the trial court of the respective date and the law that the appellant was charged with to show that the facts were read to the appellant in Kiswahili. The facts elaborated and disclosed the ingredients of the offence which as per the offence that the accused was charged with, he

agreed to have stolen the motorcycle with registration no MC 169 CER make Blast 150 MB the property of Ezekiel Hoba at Chokaa Village within Chunya District.

It follows therefore that the appellant understood the charge before him as the same was read in Kiswahili and he even signed to signify that the facts are true and correct. Thus, since the appellant admitted about the facts of the case, prosecution was under no obligation to tender the exhibits or call witnesses – see the cited case of **Richard Lionga Simageni (supra)**. The argument by the appellant that he did not explain on his own words and that the plea was a mistake is an afterthought.

All said, the complaints as to grounds 1 to 3 of the appeal are unmeritorious as the appellant unequivocally pleaded guilty. Therefore, the conviction was proper.

Coming to the sentence meted, the appellant complained the excessiveness of the offence. He cited the case of **Lubaga Senga Vs R**, [1992] TLR 357 which held as follows:

“(i) Every sentencing process cannot and should not, unless a statutory minimum sentence is being administered, avoid individualization of the offence, and the circumstances of the offender, otherwise the whole exercise becomes mechanical;

(ii) the appellant was, in the circumstances, entitled to more lenient treatment than he was accorded".

I am alive to the principle of the law that maximum punishment should be reserved for the worst offence of the class of which the punishment is provided as stated in the case of **Juma Mniko Muhere V R**, Criminal Appeal No. 211 of 2014 (Unreported). This is the first appeal and upon going through the facts of the case, I find it appropriate to make my findings on the same. In antecedents, prosecution informed the trial court that much as the appellant has no previous conviction but he has been taken to court in several occasions and the cases were dismissed for want of prosecution. Thus, they prayed for a stiff sentence to serve as deterrence. The accused person did not have any mitigation factor though he was the first offender. The trial Magistrate considered that fact and proceeded to sentence the appellant to five years in prison. In considering that under **section 265 of Cap 16** the offence attracts a maximum sentence of 7 years, the sentence of 5 years is well within the parameters of the charged offence. Moreover, in the cited case of **Lubaga Senga (supra)**, the appellant showed remorse during his mitigation and promised to compensate the

victim. Therefore, the circumstances are different. I therefore find no justifiable reason to interfere with the sentence imposed by the trial court. It remains at it is.

That being said, I find the appeal to be unmeritorious and I dismiss it in its entirety.

Ordered accordingly.




R.A. Ebrahim
JUDGE.

Mbeya
21.12.2022

Date: 21.12.2022.

Coram: Hon. A.P. Scout, Ag-DR.

Appellant: Present.

For the Republic: Mr. Rwegila – SS/A.

B/C: Jenipha Mmasi.

Mr. Rwezila - SS/A: The matter is coming on for judgement we are ready to proceed.

Appellant: I am ready too.

Court: Judgment is delivered in the present of Mr. Rwegila SS/A, appellant and Court Clerk in Chamber Court on 21/12/2022.

A.P. Scout

Ag-Deputy Registrar

21.12.2022

Court: Right of Appeal explained to the Parties.



A.P. Scout

Ag-Deputy Registrar

21.12.2022