

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**IN THE DISTRICT REGISTRY OF MBEYA**

**AT MBEYA**

**CRIMINAL APPEAL NO. 42 OF 2022**

(Originating from Criminal Case No. 91 of 2019 in the Resident Magistrate's Court of Songwe at Vwawa)

**Remmy Rashid Marandu.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**JUDGEMENT**

*Date of last Order: 21.11.2022*

*Date of Judgment: 21.12.2022*

**Ebrahim, J.**

The appellant herein and three other accused persons who are not subjects of this appeal were arraigned at the Resident Magistrate's Court of Songwe at Vwawa charged with two counts to wit:

Burglary c/s **294 (1)(a)(b)(2) of the Penal Code Cap 16 RE 2002**(now 2022); and stealing c/s **258(1)(2)(a) and 265 of the Penal Code Cap 16 RE 2002**(now 2022).

It was prosecution case that the appellant herein and the three others had on 10<sup>th</sup> day of September, 2018 at night time at Masaki area Ichenjezya village within Mbozi District in Songwe Region did break and enter into the house of one Boniface Myogege Mwala and stole one flat television make Boss and its flash disc all valued at Tshs. 965,000/-.

When the matter came for preliminary hearing on 09.10.2019, the appellant pleaded guilty to both counts. Consequently, the trial magistrate proceeded to convict the appellant on his own plea of guilty and sentenced him to serve 20 years' imprisonment in respect of the 1<sup>st</sup> count and 5 years for the 2<sup>nd</sup> count.

The appellant was aggrieved and preferred an appeal in this court raising eight grounds of appeal claiming that the case against him was not proven beyond reasonable doubt and that he was not given right and chance to understand the case made against him. He faulted the trial court for convicting him basing on the weak defective charge and that proceedings show that he once pleaded not guilty and then he pleaded guilty.

He complained on the discharge of his co-accused; that the memorandum of facts was weak; there was no exhibits tendered; and that he was not arrested at the crime scene.

At the hearing of this appeal, the appellant appeared in person, unrepresented whereas the republic was represented by Mr. Davis Msanga, learned State Attorney.

The appellant prayed for the State Attorney to begin while reserving his right to re-join.

Submitting against the grounds of appeal, Mr. Msanga prayed to submit on the 1<sup>st</sup>, 3<sup>rd</sup> to 8<sup>th</sup> grounds of appeal together and the 2<sup>nd</sup> ground of appeal alone.

Mr. Msanga submitted before the court that the plea by the appellant was unequivocal. He explained the sequence of events that on 05.08.2019 the appellant pleaded not guilty. However, on 09.10.2019 during the preliminary hearing, the appellant prayed to be reminded the charge against him and he pleaded guilty to both counts.

He submitted further that the appellant agreed to the facts read to him as true and correct making his plea unequivocal.

He referred the court to the case of **Kalos Punda Vs R**, Criminal Appeal No. 153/2005 at pg 5. He further cited the provisions of **section 360(1) of the Criminal Procedure Act, Cap 20 RE 2022** which provides that no appeal shall be entertained on a plea of guilty. He commented that the appellant did not say anything in his mitigation therefore the 20 years sentenced imposed by the Senior Resident Magistrate was correct.

In rejoinder, the appellant adopted his grounds of appeal and prayed for the court to consider them.

I have keenly followed the submissions by both parties and gone through the proceedings on record.

Before I venture into merits of the appeal, I find it prudent that I set the records clear on the position of the law with regard to appeals against conviction on plea of guilty.

**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 provides:

*"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, before the application of the said 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 CAT set conditions which must be conjunctively met for a valid conviction to be founded 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 on 09.10.2019 the following proceedings were recorded in court to reflect what transpired thereof:

*"PP The matter is for Phg. I pray for another Phg date.*

*1<sup>st</sup> accused: I pray to be reminded of the charged.*

*Court: Charge read over and explained to the accused persons in their own language (Swahili) they are asked to plea thereto:*

*1<sup>st</sup> accused: 1<sup>st</sup> count*

*"It is true that I broke the said home at night with intent to steal therein".*

*2<sup>nd</sup> count*

*"It is true that after I broke in I did steal the said items from that house".*

*...*

*Court: 1<sup>st</sup> and 2<sup>nd</sup> counts are entered as a plea of guilty in respect of the first accused person alone. The other accused persons and counts are entered as a plea of not guilty against them (2<sup>nd</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> accused persons).*

*Memorandum of facts Agreed Upon by the 1<sup>st</sup> accused:*

- 1. Name & address of the 1<sup>st</sup> accused are as seen in the charge sheet.*
- 2. That on 10.09.2018 at night time at Masaki area in Inchenyezya in Mbozi District and Songwe region, the accused did break into the house of one Boniphace Munyobege Mwale with intent to commit an offence therein.*
- 3. That on the said date, time and place after breaking unto the said house, the accused did steal one flat screen TV Make Boss along with its flash disk, both valued at 965,000/-, the property of the above mentioned.*

4. That the accused was arrested on 30.07.2019 and taken to Vwawa police station for the interrogations.
5. That in his cautioned statement, the accused did confess to the commission of the offences

1<sup>st</sup> accused: The facts as read are true and correct.

1<sup>st</sup> accused: signed

PP: Signed

09.10.2012".

Moreover, **section 294(1)(a)(b)(2) and section 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.

294.-(1) Any person who– (a) breaks and enters any building, tent or vessel used as a human dwelling with intent to commit an offence therein; or



*(b) having entered any building, tent or vessel used as a human dwelling with intent to commit an offence therein or having committed an offence in the building, tent or vessel, breaks out of it, commits an offence of housebreaking and is liable to imprisonment for fourteen years.*

*2) If an offence under this section is committed in the night, it is burglary and the offender is liable to imprisonment for twenty years.*

I have extensively reproduced the proceedings of the trial court of the respective date which conspicuously show that the facts were read to the appellant and all other three accused persons in swahili language. The facts elaborated and disclosed the ingredients of the offences which as per the offences that the accused was charged with, he agreed to have broken and entered into the house of one Boniface Myobege at night with intent to commit an offence and the offence was committed as he stole one flat TV Make Boss and its flash disc valued at 965,000/-. Owner of the property is the said Boniface Myobege. It follows therefore that the appellant understood the charge before him as the same was read in Swahili language 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.

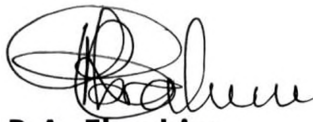
The argument by the appellant that he does not know the law is an afterthought as ignorance of the law is not an excuse and that he admitted to have broken and entered and stealing which is an offence.

All said, the complaints as to ground 1 to 8 of the appeal are unmeritorious as the appellant unequivocally pleaded guilty. Thus, the conviction was proper. As the appellant did not complain about the sentence and the trial magistrate considered the aggravating factors that the appellant is a habitual offender with no remorse, I find that I have no justification to interfere with the same.

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

Ordered according.



  
**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 case is coming on for judgement we are ready to proceed.

**Appellant:** I am ready too.

**Court:** Judgment is delivered in the present of Mr. Rwezila 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