

**IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)
AT DAR ES SALAAM
CRIMINAL APPEAL NO. 177 OF 2021**

(Arising from Criminal Case No. 16 of 2021 at the district court of Kibiti at Kibiti before Hon. F.P.
Ntulo DRM)

**OMARY AMIRY MAPANDEAPPELLANT
VERSUS
THE REPUBLIC.....RESPONDENT**

JUDGMENT

Date of Last Order: 1.12.2022

Date of Judgment: 23.2.2022

MASABO, J.:-

Upon own plea of guilty to the offence of armed robbery contrary to section 287A of the Penal Code [Cap 16 RE 2019], the appellant herein was convicted and sentenced to serve a jail term of 30 years. The brief facts of the appeal are such that on 22/4/2021 at Kibiti B area at Kibiti district, the appellant stole a radio, memory card, and mobile phone make Techno and after stealing he threatened the owner of these items one Samson Kwili Ngasa with a knife. He was thereafter arrested and aligned in court where he was convicted and sentenced on his own plea of guilty.

The conviction has disgruntled him. He is now before this court challenging the conviction and the sentence on the following grounds: **one**, the conviction was erroneously based on an equivocal plea; **two**, prior to conviction, he was not asked to admit the facts of the offence he stood charged; **three**, the case was poorly prosecuted as the prosecution did not

produce the allegedly stolen items; **four**, the court did not examine the appellant as to what he meant by saying 'it is true'; and **five**, the conviction and sentence were procured un-procedurally.

Hearing of the appeal proceeded orally. The appellant who appeared unrepresented did not add a word to his grounds of appeal. He adopted them and expressed his confidence that this court being a temple of justice will do the needful. For the respondent, Ms. Sofa Bimbiga, learned State Attorney, consolidated the 1st, 2nd, 4th and 5th grounds of appeal and proceeded to argue that the point that the plea was irregularly procured and that it was equivocal are baseless. The appellant pleaded guilty and the trial magistrate convicted him pursuant to the procedure stated under section 228(1) and (2) of the Criminal Procedure Act [Cap 20 R.E. 2019]. Exemplifying her point further she submitted that after the charges were read out the accused was called upon to enter a plea and he did so by saying 'ni kweli' and thereafter the facts of the offence showing all the ingredients of the offence he stood charged with was read and the appellant admitted all the facts thus there is nothing to fault the court. She argued further that the appeal should not be entertained as it contravenes the provision of section 360(1) of the Criminal Procedure Act which bars appeals from own plea of guilty. In support she cited the case of **Frank Mlukya v R**, Criminal Appeal No, 404 of 2018, CAT (unreported). On the 3rd ground of appeal, she argued that it is baseless as the accused was charged with armed robbery and not being found with stolen items which would require production of the items in court.

I have dispassionately considered the grounds of appeal and the submission by the learned counsel. To start with, the kernel of the grounds of appeal and the submission made the learned State Attorney is the provisions of section 228(1) and (2) of the Criminal Procedure Act (supra) which mandates a trial court to enter conviction and sentence based on the accused's own plea of guilty. They provide thus:

- (1) The substance of the charge shall be stated to the accused person by the court, and he shall be asked whether he admits or denies the truth of the charge.
- (2) (2) 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. [emphasis added]

An appeal emanating from a conviction so entered brings to the fore the provision of section 360(1) of the Criminal Procedure Act. In this provision it is explicitly stated that, save for extent and legality of sentence, an appeal shall not lie from a conviction on own plea of guilty. The scope of this provision has been extensively litigated and the principle as expounded in **Laurence Mpinga v. Republic** [1983] TLR 166 is now fairly settled that, no appeal shall lie against a conviction on own plea of guilty save where the plea was imperfect, **ambiguous** or unfinished; the plea of guilty was premised on a mistake or misapprehension; the charge laid against the appellant disclosed no offence known to law; or that upon the admitted facts he could not in law have been convicted of the offence charged (Also see;

Josephat James v R; Criminal Appeal No. 316 of 2010 and **Frank Mlukya v R** (supra). An appeal challenging the legality of conviction on own plea of guilty would certainly fail if none of the special circumstances expounded in the above authorities is espoused.

In the present appeal, the major complaint fronted by the appellant is that much as he pleaded guilty to the offence, his plea was equivocal. In view of this, the main issue which this court must consider and determine is whether the plea entered by the appellant to the charges facing him in the trial court was equivocal. The case of **Adan v Republic** (1973) EA 445 at page 446, provided guidelines on how an unequivocal plea can be derived. It states thus,

"When a person is charged, the charge and 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 which he can speak and understand. The magistrate should then explain to the accused person all essential ingredients of the offence charged. If the accused then admits all those essential 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 to 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 guilty, the magistrate should record the change of plea to "not guilty" and proceed to hold a trial. If the

accused person 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 sentence. Statement of facts and the accused's reply must, of course, be recorded..."

Further guidance on dealing with appeals from own plea of guilty is deductible from **Rex Vs Yonasani Egalu and Others** (1942) EACA 65 at Page 67 which was quoted with approval by the Court of Appeal of Tanzania in **John Faya Vs Republic**, Criminal Appeal No. 198 of 2007. In that case, the defunct Eastern African Court of Appeal stated thus:

In any case in which a conviction is likely to proceed on a plea of guilty, it is most desirable not only that every constituent of the charge should be explained to the accused but that he should be required to admit or deny every constituent and that what he says should be recorded in a form which will satisfy an appellate court that he fully understood the charge and pleaded guilty to every element of it unequivocally.

In the present case, page 1 and 2 of the word-processed proceedings reveals what transpired in court on 6/5/2021 after the appellant was arraigned in court. A self-explanatory part of this proceedings is as appears below:

CORAM: F.P. NTULO RM
PROS: NYALIFA SP
C/C RAPHAEL ALBERT
ACCD: PRESENT'
CHARGE READ OVER AND PROPERTY EXPLAINED
TO THE ACCUSED PERSON WHO IS ASKED TO PLEA
THERE TO THUS;

PROS: This is a fresh case

Accused Person: Kweli

COURT: the accused person entered a plea as a plea of guilty

Signed F.P. Ntulo

DRM

6/5/2021

Thereafter, the prosecutor prayed and was granted leave to read out the facts of the case to the accused. And, upon the facts being read out, the court entered a conviction as follows:

COURT

The prosecutor narrated the facts containing the offence of armed robbery contrary to section 287A of the Penal Code Cap 16 RE 2019. The accused person entered a plea of guilty. Thus, I hereby convict him in his own works plea of guilty to the charges thereto. It is so ordered.

When the principle expounded in the above cited authorities is applied to the extracts above, the shortcoming in the self-explanatory proceedings above becomes conspicuous in numerous ways. **First**, contrary to the requirement of the law, the proceedings are silent on whether the charges were read in a language understood by the appellant. Thus, it can only be assumed that he understood the charges read over to him by the prosecution. **Second**, contrary to the requirement that the accused be called upon to admit to the facts of the case after they are read over to him by the prosecution, the proceedings is silent on this requirement thereby presupposing that, after the statement of offence was complete, the accused was not accorded an

opportunity to either dispute or explain the facts or to add any relevant facts to the statement read over. The omission is by all standards fatal and renders the plea equivocal.

Under the premise, the court has found merit in the 1st, 2nd, 4th and 5th ground of appeal which sufficiently disposes of the appeal. The appeal is consequently allowed. The conviction and sentence metered against the appellant by the trial court are hereby quashed and set aside. It is subsequently ordered that the appellant be discharged from custody with immediate effect unless he is held for a lawful cause not connected with the offence leading to this appeal.

DATED at DAR ES SALAAM this 23th day of February 2022.

X



Signed by: J.L.MASABO

J.L. MASABO
JUDGE

