

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(SUMBAWANGA DISTRICT REGISTRY)

AT SUMBAWANGA

DC. CRIMINAL APPEAL NO. 57 OF 2020

(C/O Criminal Case No. 83 of 2020 of Kalambo District Court)

(N.K. Temu, RM)

WILLIAM S/O SONDAS @ SIKAZWE APPELLANT

VERSUS

THE REPUBLIC RESPONDENT

JUDGMENT

31/03 & 11/05/2022

NKWABI, J.:

To challenge his conviction and sentence to serve five years imprisonment the appellant lodged eight grounds of appeal in this court. In the District Court, the appellant was charged with stealing animals contrary to section 258 (1) and 268 (1) and (3) of the Penal Code, Cap. 16 R.E. 2002 now revised edition 2019. The respondent alleged that it was on 30th day of July 2020 at about 06:00 hrs at Mtuntumbe village within Kalambo District in Rukwa region the appellant willfully and unlawfully did steal one cattle valued at T.shs 400,000/= the property of Moses s/o Simtowe.

When the charge was read over and explained to the appellant, in the trial court, and upon being called upon to plea, the appellant replied:

"Ni kweli niliiba ngómbe mmoja na ameletwa hapa mahakamani."

Undoubtedly, a plea of guilty was entered as such. Facts of the case were read over to the appellant and when asked as to the correctness of the facts the appellant replied:

"I admit all facts adduced by the prosecution."

The trial court was satisfied with the plea of the appellant, found him guilty as charged, convicted him as charged and sentenced him to serve five years imprisonment. One of the facts which were admitted by the appellant is that and I quote:

"That, on the same date, accused did steal one cattle property of Moses s/o Simtowe with value at Tshs. Four hundred thousand (400,000/=)."

Now, the grounds of appeal of the appellant are as follows:

1. *"That the trial magistrate grossly erred in law and in fact by convicting the appellant without contingent evidence. The conviction of appellant caused by police officer with **No. E. 9528 D/CPL Vitus** who tortured, beated and forced appellant during interrogation to admit the offence after arrest him thus, appellant pleaded guilty.*
2. *That, the appellant was not afforded opportunity to defend the case hence was not fully heard contrary to principles of natural justice. On **30/07/2020 Geshom Alfred Sikazwe** agreed with appellant to send one cattle owned by him from Mtuntumbe village up to Kasesha village for the consideration of **twenty thousand shillings (20,000/=)** and instructed appellant to send that cattle to client of **Geshom Alfred Sikazwe** who called **Mr. Sichilima.***
3. *That, the trial magistrate relayed on evidence which had many doubt, contradictory hence reached wrong decision. The appellant after being arrested tried to tell police officer the truth about the cattle on where he get it and who gave him to send the cattle to Kasesha village but police officer ignored him even through appellant believe that the cattle is a property of*

Geshom Alfred and not **Moses s/o Simtowe** as prosecutor believed.

4. *The trial magistrate erred both laws and facts by not evaluating that the evidence adduced by prosecutor did not measure up to the requisite standard both in relation to credibility and reliability.*
5. *That, the trial magistrate erred in law and facts by relaying on contradictory evidence of prosecutor and interrogation made by police officer with **No. E. 9528 D/CPL Vitus** which were confusing conflicting and incompatible hence miscarriage of justice.*
6. *That, the trial magistrate made serious misdirection of law by not considering the idea and mitigation adduced by the appellant before district court. Hence convict him and sentenced him to serve **(5) years** jail imprisonment which is contrary to the principle of natural justice.*
7. *That, the trial magistrate made fundamental error both in law and facts by failing to afford an opportunity the appellant to defend the case before the court of law if that could be done could come with different conclusion. A copy of proceedings from*

*the District court of Kalambo at Matai attached herewith as **Annextures S- 1** forming part of this petition of appeal.*

*8. That, judgment delivered on **03/08/2020** but up to day appellant together with his relatives make on different efforts to get the copy of judgment but their efforts fail due to the negligence done from District court of Kalambo at Matai but only provide to them proceedings that's why only proceedings attached herewith to support this petition of appeal."*

When the appeal was called up for hearing the appellant appeared in person and argued that the trial court did not do him justice and that he was not granted opportunity to defend himself. He urged this court he adopts all his grounds of appeal be adopted as his submission.

Equally, Mr. John Kabengula learned State Attorney appeared on behalf of the respondent at the hearing and objected the appeal for reasons that the appellant pleaded guilty. Further facts of the case were narrated in court whereby he admitted the same. In **Lawrence Mpinga V. Republic**

[1983] TLR 166, he backed his submission by the case law. He insisted the plea in this case is unambiguous.

Since the appellant pleaded guilty, he could therefore not enter a defence. There was no evidence recorded so there was no need of analyzing the evidence in court as the appellant was convicted on his own plea of guilty, Mr. Kabengula argued. He prayed the appeal be dismissed. In a short rejoinder the Appellant disputed the submission of the respondent.

I have carefully gone through the grounds of appeal and the submissions of both parties in this appeal, I am of the view that the appellant was under a wrong view that despite his unequivocal plea the case ought to have gone to full trial. This is because no any ground of appeal listed by the appellant falls in the purview of the case of **Laurent Mpinga v. Republic** [1983] TLR 166 where this court established the circumstances in which an appellant in an appeal of this nature may succeed and they are:

"An accused person who has been convicted of an offence "on his own plea of guilt" may appeal against the conviction to a higher court on any of the following grounds

- A. That, even taking into consideration the so called 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 guilt.*
- B. That he pleaded guilty as a result of mistake or misapprehension.*
- C. That the charge laid at his door disclosed no offence known to law.*
- D. That upon the admitted facts he could not in law have been convicted of the offence charged."*

Nevertheless, Mr. Kabegula did not think that was the case that the facts of the case were not clear to the appellant, he pressed that the plea was unambiguous and in line with the criterion in **Laurent's** case (supra). I agree with Mr. Kabengula. I am of the view that if I decide otherwise, the

respondent and any other person would be left wondering why the law has parted company with common sense, as was observed by his Lordship Samatta, J., as he then was, in **Samweli Msivangala v. Republic** [1980] TLR 319. That is also in line with the position of the law that words spoken in the plea have to be considered in defence, see **Safiel Mrisho v Republic** [1984] TLR 151 (HC) and if that is the position why should such words spoken in the plea not be considered where a person pleads guilty and proceeds to accept the correctness of the facts of the case? I think, they should.

Be that as it may, as the sentence of five years is in accordance with the Minimum Sentences Act, Cap. 90 R.E. 2019, I find nothing to fault the trial court in respect of the conviction and sentence. The appeal lacks merits, consequently it is dismissed. Conviction and sentence meted out by the trial court against the appellant are upheld.

It is so ordered.

DATED at **SUMBAWANGA** this 11th day of May 2022.



J. F. NKWABI

JUDGE

