

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(SUMBAWANGA DISTRICT REGISTRY)

AT SUMBAWANGA

DC. CRIMINAL APPEAL NO. 77 OF 2021

(C/O Criminal Case No. 92 of 2021 of Kalambo District Court)

(R.M. Rugemalira, SRM)

STEVEN S/O PATRICK @ GOBILI APPELLANT

VERSUS

THE REPUBLIC RESPONDENT

JUDGMENT

17/03 & 08/04/2022

NKWABI, J.:

The appellant was, in the District Court, charged with stealing animals contrary to section 258 (1) and 268 (1) and (3) of the Penal Code, Cap. 16 R.E. 2019. The respondent alleged that it was on 30th day of July 2021 at about 03:00 hrs at Mkowe village within Kalambo District in Rukwa region the appellant willfully and unlawfully did steal two heads of cattle valued at T.shs 1,000,000/= the property of Michael s/o Sokoni.

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

"Ni kweli niliiba ngómbe wawili mali ya Michael s/o Sokoni."

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:

"Your honour, all the facts adduced are true and I admit them."

The trial court was satisfied with the plea of the appellant, convicted him as charged and sentenced him to serve five years imprisonment. That was on 02/08/2021. On 10th August, the appellant signed a notice of intention to appeal under section 361 (1) and 392 A (2) of the Criminal Procedure Act, Cap. 20 R.E. 2019. It was duly filed in the District Court on 10/08/2021 well within the prescribed time. In the notice of intention to appeal, the appellant indicated that he was intending to appeal against conviction and sentence and asserted his intention to appear in court.

In his petition of appeal which comprises five justifications of appeal, in the 1st and 2nd grounds of appeal, the appellant is lamenting that he was convicted and sentenced on an offence which was not proved beyond reasonable doubt. On the 3rd, 4th and 5th basis of appeal, the appellant challenged his being convicted on equivocal plea of guilty, that it was his

first time to stand before the court, that he was denied to dispute, or add anything to the facts and that the charge was not read over to him twice. He thus prayed the appeal be allowed, conviction and sentence be quashed and he be released from prison.

At the hearing of the appeal, the appellant appeared in person while the respondent (the Republic) was represented by Ms. Safi Kashindi, learned State Attorney. In his submission in chief, the appellant argued that he did not commit the offence, the charge was not proved beyond reasonable doubt. He prayed for justice.

Ms. Kashindi for the respondent resisted the appeal contending that the appellant pleaded guilty on his own volition. After the charge was read over to the appellant, he pleaded guilty. She said, under section 360(1) of the Criminal Procedure Act, Cap. 20 R.E 2019 an appeal cannot be lodged against a plea of guilty, it can lie only on sentence. The trial court recorded the plea correctly, she added.

She further maintained that when the facts of the case were read over to the appellant, he admitted all the facts to be correct. She further stressed that there is no requirement of the charge sheet to be read over twice. She referred me to the case of **Laurent Mpinga v. Republic**, [1983] TLR 166. She insisted the plea was unequivocal and was of the view that the sentence was correct in accordance with the Minimum Sentences Act. She prayed the appeal be found to be meritless and it be dismissed.

The appellant had no rejoinder submission, but implored upon me to look at his appeal very closely.

Admittedly, in the case of **Laurent Mpinga v. Republic** [1983] TLR 166 this court had these to say:

"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."

The complaints of the appellant in this court, are not based on the "C" criterion, rather on the "A", "B", and "D" criteria according to Laurent's case (supra). Now are the complaints of the appellant having substance or are they justified?

For one to agree with the complaints of the appellant, when he assails his plea he had entered to the effect, "*Ni kweli niliiba ngómbe wawili mali ya Michael s/o Sokoni.*" one should have a consideration of the word "niliiba" if it is foreign to the appellant. The appellant was aged 22 years at the time he pleaded guilty. Is it that he did not understand the meaning of the word "niliiba" which in English is "I stole"? The proposition of the appellant is hard to understand and agree with. In any way he did not suggest that to be the situation.

The next question is, were the facts of the case not clear to the appellant? To make the plea equivocal one. I will pick some of the facts of the case to demonstrate my decision. These are:

"That the accused did steal two (2) cattle valued T.shs 1,000,000/= (one million), properties of one Michael s/o Sokoni. After stealing those cattle, he took them and brought them to Keleni village and when he was in the process of selling them, he was arrested together with those cattle."

Are these facts not clear as the appellant wants me to believe? It should be remembered that the appellant at the time of pleading to the charge he said, *"Ni kweli niliiba ngómbe wawili mali ya Michael s/o Sokoni."* Ms. Kashindi did not think that was the case that the facts of the case were not clear to the appellant, she pressed that the plea was unequivocal and in line with the criterion in **Laurent's** case (supra). I totally agree with Ms. Kashindi that the plea was clear and unambiguous and the facts are very clear.

Is there a requirement that the charge sheet ought to be read over to the appellant twice? As far as I know, there is no such law and I agree with Ms. Kashindi to that effect. There is also no need of bringing evidence. Evidence is brought when the accused person denies the charge or his plea is

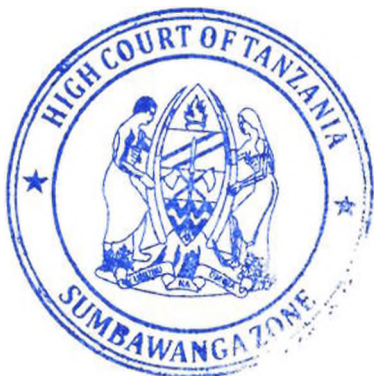
equivocal or that he disputed crucial facts of the case. The lamentation to that effect by the appellant has no substance and dismissed. To that end, the appeal filed by the appellant against conviction is found to lack in merit, it is dismissed.

I remain with the appellant's assailment on the sentence meted on him, which is imprisonment for 5 years. I accept Ms. Kashindi's submission that there is nothing to fault the sentence imposed on the appellant since that is in accordance with the Minimum Sentences Act, Cap. 90 R.E. 2019. This ground of appeal fails.

In fine, this appeal lacks merits. It is dismissed. Conviction and sentence made by the trial court against the appellant are upheld.

It is so ordered.

DATED at **SUMBAWANGA** this 8th day of April 2022



J. F. NKWABI

JUDGE