

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

**BUKOBA DISTRICT REGISTRY**

**AT BUKOBA**

**CRIMINAL APPEAL NO. 89 OF 2021**

*(Arising from Original Criminal Case No. 35 of 2017 of the Biharamulo District Court)*

**TIBICHAYA KASERABO..... APPELLANT**

**VERSUS**

**THE REPUBLIC.....RESPONDENT**

**JUDGMENT**

11/04/2022 & 11/05/2022

**NGIGWANA, J.**

In the District Court of Biharamulo at Biharamulo, the appellant Tibichaya s/o Kaserabo and other three bandits were charged with the offence of Attempted Armed Robbery contrary to section 287B of the Penal Code Cap. 16 R: E 2019.

When the charge was read over and explained to them, the appellant pleaded guilty to the charge while the rest of the bandits denied the charge. The facts leading to conviction were read and explained to the appellant whereas, the appellant admitted the truth and correctness of all facts. The District Court was satisfied that the plea was unequivocal plea. Consequently, the appellant was convicted upon his own plea of guilty and sentenced to serve a term of fifteen (15) years imprisonment. The appellant was aggrieved by that decision, hence the present appeal.

The brief background of the case in the District Court is to the effect that; on 24/12/2016 during night hours at Mwembeni Runazi Village within Biharamulo District in Kagera Region, the Appellant together with other three bandits while armed with bush knives and stones, stopped the motor vehicle with registration No. T.115BRH make Hiece the property of Moheshamu s/o Maulid in order to rob the passengers therein. That, driver disobeyed their order, as a result, the appellant and the said other three bandits ended throwing stones to the motor vehicle and managed to break the wind screen valued at Tshs. 150,000/=. The matter was reported to the police whereas the investigation commenced. That, the appellant and the said other three bandits were eventually arrested and on 20/2/2017 and eventually were arraigned before the District Court of Biharamulo for the offence of Attempted Armed Robbery.

Dissatisfied, the Appellant has come to this court armed with four grounds of appeal:-

- 1. That, the charge was not read and explained to the appellant at the language understood to him.*
- 2. That no language contended to be known by the appellant when the charge was read and explained to him before invited to plead.*
- 3. That the facts alleged to have been admitted by the appellant after his plea did not disclose the language which was used to read and explain the said facts to him.*
- 4. That nowhere the appellant was invited to sign the facts after his admission.*

When the matter came for hearing, the appellant appeared in person and unrepresented while Mr. Grey Uhagile, learned State Attorney appeared for

the Respondent/Republic. The appellant prayed for the court to adopt his grounds of appeal to form his submission. Though the appellant has raised four grounds of appeal, they are interrelated therefore, they can conveniently be merged into one ground;

*"That the District Court of Biharamulo erred in law and fact to convict and sentence the appellant basing on equivocal plea."*

Opposing the appeal, Mr. Uhagile submitted that the appellant was convicted upon his own plea and according to section 360 (1) of the Criminal Procedure Act Cap. 20 R: E 2019, no appeal shall be allowed in a case of any accused person who has pleaded guilty and has been convicted on such plea by a subordinate court except as to the extent or legality of the sentence.

Mr. Uhagile went on submitting that, the appellant admitted all the ingredients of the offence of Attempted Armed Robbery, therefore the plea was an unequivocal plea. He made reference to the case of **Athumani versus R** [2006] TLR 79 in which it was emphasized that where the accused is convicted upon unequivocal plea, he cannot appeal against conviction. Mr. Uhagile also cited the case of **Carlos Punda versus Republic**, Criminal appeal No. 153 of 2005 CAT (unreported). He ended his submission urging the court to dismiss this appeal and uphold both conviction and sentence imposed against the appellant by the District Court of Biharamulo.

In his rejoinder, the appellant ended urging the court to do justice for him.

I have considered the grounds of appeal, the appellant's submissions and submissions by the respondent side. **The issue for determination is whether the appellant's plea was unequivocal plea or otherwise.**

Generally, a person convicted of an offence on his own plea of guilty is barred from appealing against conviction. He can only appeal against the extent or legality of the sentence imposed. That is in terms of section 360(1) of the Criminal Procedure Act, Cap. 20 R. E. 2019 (the CPA).

The same provides that;

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

However, for the court to convict the accused based on a plea of guilty and punish him for the offence charged without trial, the plea must be complete, unequivocal and unambiguous.

For a plea to be unequivocal for purposes of conviction, there are conditions that the convicting court must ensure that they exist conjunctively at the time of conviction. In the case of **Michael Adrian Chaki versus The Republic**, Criminal Appeal No. 399 of 2017 (unreported), the Court of Appeal stated that there cannot be an unequivocal plea on which a valid conviction may be founded **unless these conditions are conjunctively met:-**

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 dear in its mind, that an accused fully comprehends what he i actually faced with, otherwise injustice may result.*

3. *When the accused is called upon to plead to the charge, the charge is stated and fully explained to him before he is 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 facts 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 dear.*
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 the elements of the offence charged. See also **Laurent Mpinga vs Republic** [1983] TLR 166 and **Karlos Punda versus Republic (Supra)**.*

I will now examine at close range and with keen attention, the proceedings of Biharamulo District Court dated 20<sup>th</sup> February 2017 to find out whether the above conditions were met, and determine whether it was proper for the District Court to convict and sentence the appellant.

**Firstly**, in the matter at hand, the charge was well-drawn in compliance with section 132 of the Criminal Procedure Act, Cap 20 R: E 2019 hence a valid charge for it contains a statement of the specific offence with which the appellant was charged, together with such particulars capable of affording him with reasonable information as to the nature of the offence charged. The offence charged in this case is that of Attempted Armed

Robbery. In that premise, the first condition was met because the appellant was arraigned on a proper charge.

**Secondly,** according to the record, after reading over and explaining the charge to the appellant, the court recorded the plea of the appellant as follows;

**“Ni kweli nilitaka kuteka gari, tulikua na mapanga”**

The charge read over to the appellant was as follows;

**“STATEMENT OF THE OFFENCE:** Attempted Robbery Contrary to Section 287B of the Penal Code Cap 16 of the Laws

**PARTICULARS OF THE OFFENCE:**

*That Tibachanya s/o Kaserabo, Justine s/o Severin, Mashaka s/o John and Geoffrey s/o Kasaba are jointly and together charged on 24<sup>th</sup> day of December, 2016 during night hours at Mwembeni Runazi Village within Biharamulo District in Kagera Region being armed with bush knives and stones with intent to steal did cause damage of the car wind screen valued at Tshs. 150,000/= the property of one Mahashim s/o Maulid by hitting it with stones when attempting to steal from the passengers in a car with Registration No.T.115 BRH Hiece”*

The charge disclosed the ingredient of the offence, the appellant with other three bandits were armed with bush knives and stones. The charge disclosed their intention to steal the passengers’ properties. The facts leading to conviction were also read and explained to the appellant and he admitted all the facts to be true and correct. Below are the facts which were read to the appellant;

*"That the names and address of the 1<sup>st</sup> accused are as per charge sheet. That on 24/12/2016 at night hours at Runazi Biharamulo District, the 1<sup>st</sup> accused while with other suspects, been armed with matchets and stones with intent to steal, stopped the car with Registration No.T.115 BRH make Hiece which was driven by Mahasham s/o Maulid. That after the driver refused to stop, they threw stones to the said car, as a result, they caused damages to the windscreen and other parts of the car, which they failed to rob anything from the passengers who were in the car. That efforts to apprehend the accused went on and he was arrested on 13/2/2017. It is today he admitted to commit the offence after the charge read over two times"*

*That is all.*

***Sgd N. W. Mwakatobe-SRM***

***20/2/2017***

***Court:*** *Do you understand the facts above or you still need elaboration*

***1<sup>st</sup> Accused:*** *I understood them clearly*

***Court:*** *Is there anything you disagree with the facts above?*

***1<sup>st</sup> Accused:*** *I admit the facts above as they are true and correct*

***Sgd N.W. Mwakatobe- SRM***

***20/02/2017***

***Sgd. 1<sup>st</sup> accused***

***Sgd. PP***

***Court:*** *The facts which the 1<sup>st</sup> accused has admitted without any qualification do constitute the offence charged and I convict him accordingly*

***Sdg N. W. Mwakatobe, SRM***

***20/02/2017"***

Reading the here in above facts, the reaction of the appellant and the finding of the court, it is also apparent that the 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> conditions were met. The plea of the appellant shows that the charge and facts were read over and explained to him in Kiswahili language. Even in this court the appellant, understood and spoke Kiswahili fluently and he had never asked for an interpreter. In the event, I totally agree with Mr. Uhagigle, learned State Attorney that the plea of the appellant was an unequivocal plea, therefore, he is barred by the law from appealing against conviction.

Another question is whether the sentence of 15 years imposed against the appellant was adequate or inadequate or excessive. Section 287B of the Penal code Cap 16 R: E 2019 provides that;

*" Any person who with intent to steal anything from another person is armed with any dangerous or offensive weapon or instrument, or is in company of one or more persons, and in the course thereof threatens, or attempts to threaten to use actual violence to any person, commits an offence termed attempted armed robbery and **on conviction is liable to imprisonment for a minimum period of fifteen years with or with corporal punishment.**"*

From the above provision, it is clear that the minimum sentence provided for the offence is 15 years imprisonment. It is a principle of law that an appellate court cannot interfere with sentence of the trial court unless such sentence is manifestly excessive or inadequate or where the trial court acted on a wrong principle or took into account irrelevant matters. See **Selemani Makumba versus Republic** [2006] TLR 379.



Since the Minimum sentence for the offence of Attempted Armed Robbery was 15 years imprisonment, and in the matter at hand in which the appellant stood charged with the said offence, upon conviction, the appellant was sentenced to serve a minimum sentence of 15 years in jail as required by the law, the said sentence cannot be faulted.

In the upshot, this appeal is devoid of merit, therefore, it is hereby dismissed in its entirety. ~~It is so ordered.~~

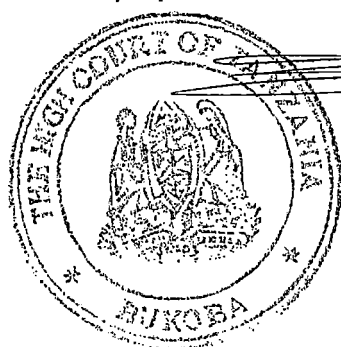


  
E.L. NGIGWANA

JUDGE

11/05/2022

Judgment delivered this 11<sup>th</sup> day of May 2022 in the presence of the Appellant, Mr. Grey Uhagile, learned State Attorney for the Respondent/Republic, Mr. E .M Kamaleki, Judges' Law Assistant and Ms. Tumaini Hamidu, B/C but in the absence of the Respondent/Republic.



  
E.L. NGIGWANA

JUDGE

11/05/2022