IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MOSHI DISTRICT REGISTRY

AT MOSHI

CRIMINAL APPEAL No. 34 of 2022.

(*Originating from Mwanga District Court Criminal Case No. 23 of 2022*)

SAID ATHUMAN ISSA ..... APPELLANT

VERSUS

REPUBLIC ..... RESPONDENT

JUDGMENT

Last Order: 13/2/2023
Judgment: 13/3/2023

MASABO, J.:-

In this first appeal, the appellant is challenging a conviction and a jail term for 30 years passed by the district court for Mwanga District at Mwanga following his own plea of guilty to the offence of armed robbery contrary to section 287A of the Penal Code [Cap 16 RE 2022].

In brevity, the alleged facts leading to his conviction and sentence were that, on 29th January 2022, the appellant while in the company of two other persons robbed one Omary Nguluma who was at his farm at Kwakihindi village within Mwanga district. In accomplishing their mission, they threatened and injured Omary with a bush knife and stole from him a sum of Tshs 180,000/= he had in his pocket. The appellant was apprehended on the same day and taken to Mwanga Police station where he admitted to have committed armed robbery. His allies ran away and are still at large.

Upon being arraigned in court, the appellant entered a plea of guilty to the offence of armed robbery and after the facts of the offence were read over, he admitted to have committed the offence chrged. Hence the conviction and the 30 years jail sentence.

Aggrieved by the conviction and sentence he has approached this court armed with the following four grounds:

1. The trial magistrate erred in law and fact for failure to consider the principle of natural justice against the appellant (the right to be heard);
2. The appellant's plea was equivocal as the trial magistrate grossly erred in both law and facts for failure to comply with important duty imposed on her by section 228 (1) of the CPA Cap 20.
3. The trial magistrate grossly erred both in law and fact for failure to consider that every constituent of the outlined facts read out to the appellant was supposed to be explained and he was to be required to admit or deny every constituent and unequivocally enter plea of guilty to every element of the offence;
4. The trial magistrate grossly erred in both law and facts when she failed to adopt the opinion expressed by the court of appeal in the case of **Ibrahim Bin Salehe V R** TLR 461 that it is not desirable to record plea of guilty in a capital charge.

The appeal was contested by the respondent and the hearing of the same proceeded by way of written submission. The appellant was unrepresented while the respondent was represented by Mr. Makule, learned State Attorney.

On the 1st ground, the appellant submitted that by convicting and sentencing him without being heard, the trial magistrate erred in law for failure to adhere to Article 13(6)(a) of the Constitution of the United Republic of Tanzania of 1977. On the 2nd ground, he argued that the trial magistrate failed to comply with the duty imposed by section 228(1) of the Criminal Procedure Act as the substance of the charge was not clearly explained to him which made the plea equivocal. In respect of the 3rd grounds of appeal, he argued that the facts of the offence were not explained and he was not required to admit or deny every constituent of the offence to the satisfaction of the court that he fully understood the charge. On the fourth ground, he briefly submitted that, it is not preferable to accept a plea of guilty in a capital offence. In summation, he submitted that the trial was rendered a nullity by procedural irregulars. Fortifying this summation, he cited the case of **Mussa Mwaikunda vs Republic,** criminal Appeal 2006, Mbeya Registry (unreported) and argued that a trial may become a nullity if the basics of a fair trial such as the right to plea to the charge against him, right to challenge the accusations, right to understand the nature of proceedings, the right to follow the proceedings and to make a defense are not guaranteed to accused person.

In reply, Mr. Makule, learned State Attorney, commenced his submission with brief facts of the appeal. He drew the court's attention to section 360 (1) of the Criminal Procedure Act [Cap 20 RE 2022] which bars appeals against convictions emanating from the accused's own plea of guilty to the charge. He proceeded that, pursuant to this provision an appeal against conviction on one's plea is unmaintainable save when the

accused's plea was imperfect, ambiguous or unfinished; when such plea of guilty was a result of a mistake or misapprehension; the charge laid at the door of the accused person discloses no offence known by law; and where the facts of the case read to the accused person could not establish the offence charged. He then cited the case of **Halfani Sudi Versus Abieza Chichili** [1998] TLR 527 and argued that, it is an elementary law that court records should be believed as they represent what actually transpired in court and should not, therefore, be easily impeached.

Moving to the grounds of appeal and whilst consolidating his submissions on 1st, 2nd and 3rd grounds, he argued that page 1 of the trial court proceedings show that the charge disclosed the offence of armed robbery and was read and explained to the appellant and he pleaded guilty to all key elements of the offence which indicated that he understood the nature of accusation and the trial court was satisfied that his plea was unequivocal. Further, he argued that, page 2 of the proceedings shows that the facts of the case were read over to the appellant and he admitted all facts to be true and correct. His reply to the charge and facts of case bears testimony that he was offered the right to be heard and the trial magistrate cannot be faulted as he was right in convicting and sentencing him based on his unequivocal plea of guilty. He concluded that the 1st, 2nd and 3rd grounds are devoid of merit and should be dismissed.

Regarding the 4th ground, Mr. Makule submitted that, in our jurisdiction, there is no requirement to prove the case beyond reasonable doubt when the accused person admits the same. He cited the case of **Joel Mwangambako v the Republic,** Criminal Appeal No. 516 of 2017

(unreported) where it was held that, where as it was the case in point, the accused pleads guilty and plea is unequivocal and unambiguous, the court assumes jurisdiction of convicting and sentencing him based on the plea of guilty. Resting his submission, he prayed that the appeal be dismissed for want of merit.

I have considered the submission by both parties and thoroughly read the record from the lower court. While it is not under dispute that the appellant was convicted after he offered a plea of guilty when he was arraigned in court, he has implored upon this court to find that he was wrongly convicted as his plea was flawed. He has raised a total of four separate grounds which ultimately seeks to answer whether he was wrongly convicted and sentenced.

As rightly submitted by the learned State Attorney, appeals from the accused person's own plea of guilty are regulated by section 360(1) of the Criminal Procedure Act [Cap 30 RE 2022] which categorically state that save for legality of sentence, no appeal shall lie against a conviction based on the accused's own plea of guilty. However, as he has similarly submitted, this rule is not without exceptions. The exceptions are propounded in a plethora of authorities from the Court of Appeal, including the case he has cited. In **Josephat James vs Republic,** Criminal Appeal 316 of 2010 [2012] TZCA 191 (TAZLII), which is one of the landmark authorities in this subject, the Court of Appeal had this to say:

> "We are fully aware that notwithstanding a conviction resulting from a plea of guilty, under certain circumstances an appeal arising thereof, may be entertained by an appellate court. These

would include situations where the appellant did not appreciate the nature of the charge or did not intend to admit he was guilty of it (**Rex v Forde** (1923) KB 400 at 403. Equally, it may be entertained where:

(i) the plea was imperfect, ambiguous or unfinished and, for that reason, the lower court erred in law in treating it as a plea of guilty;

(ii) an appellant pleaded guilty as a result of a mistake or misapprehension;

(iii) the charge levied against the appellant disclosed no offence known to law, and

(iv) upon the admitted facts, the appellant could not in law have been convicted of the offense charged. (See, **Lawrent Mpinga V The Republic,** (1983) TLR 166 (HC) cited with approval in **Ramadhan Haima's** case {supra)).

The appellant has passionately submitted and argued that his plea falls under the exception above hence appealable. In the 2nd and 3rd ground which I prefer to consolidate and start with he has argued that, the trial court abdicated its duty under section 228(1) to (3) of the Criminal Procedure Act. To appreciate his argument section 228 which provides guidance on plea taking when an accused is arraigned in court, is hereby reproduced. It states thus,

> **"228**. -(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.
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> (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.

(3) Where the accused person does not admit the truth of the charge, the court shall proceed to hear the case as hereinafter provided.

The import of this section has been a constant subject in our courts such that, it has been extensively discussed and the position is well known. The decisions of the Court of Appeal in **Sokoine Mtahali @ Chimongwa V Republic** Criminal Appeal No. 459 of 2018 [2022] TZCA 575; **Onesmo Alex Ngimba V Republic** Criminal Appeal No. 157 of 2019 [2022] TZCA 26; **Michael Adrian Chaki V Republic** Criminal Appeal No. 399 of 2019 [2021] TZCA 454 (all from TANZLII), suffice to illustrate. In the latter case, **Michael Adrian Chaki v Republic** (supra), the Court listed the following six (6) conditions that must be conjunctively met for a plea of guilty to qualify as an unequivocal plea on which a valid conviction may be founded:

> "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 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."

On the first condition whether the charge was properly framed and disclosed an offence known to law, further reference is drawn from Section 132 of the Criminal Procedure Act which lays down the contents of a charge and states thus:

> "Every charge or information shall contain, and shall be sufficient if it contains, a statement of the specific offence or offences with which the accused person is charged, together with such particulars as may be necessary for giving reasonable information as to the nature of the offence charged. "

The appellant in the present case was charged and convicted of the of armed robbery created under section 287 A of the Penal Code which reads:

> "A person who steals anything, and, at or immediately before or after stealing is armed with any dangerous or offensive weapon or instrument and at or immediately before or after stealing uses or threatens to use violence to any person in order to obtain or retain the stolen property, commits an offence of armed robbery and shall, on conviction be liable to imprisonment for a term of not less than thirty years with or without corporal punishment."

Going by the principle above, it was incumbent for the charge to make a full disclosure of the main ingredients of the offence of armed robbery, that is, theft and use of dangerous or offensive weapon or robbery

instrument to threaten or injure the victim at or immediately after the commission of robbery (see **Kashima Mnadi v. Republic**, Criminal Appeal No, 78 of 2011, CAT (unreported), **Shabani Said Ally v Republic**, (Criminal Appeal No. 270 of 2018) [2019] TZCA 382 (TANZLII), and **Kisandu Mboje vs Republic** (Criminal Appeal 353 of 2018) [2022] TZCA 425 (TANZLII). Looking at the charge which appears to have been drawn and filed in court on 28th February, 2022, I have observed that it had the following statement and particulars of the offence:

> **"STATEMENT OF THE OFFENCE:** Armed Robbery C/S 287 A of the Penal Code Cap 16 R.E 2019.
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> **PARTICULARS OF THE OFFENCE:** That **SAID S/O ATHUMAN ISSA** charged on the 29th day of January, 2022 at or 02:00 hrs at Kwakihindi village within Mwanga District in Kilimanjaro Region did steal cash money Tsh. **180,000/-** properties of **OMARY S/O HAMIS NGULUMA** and immediately before that time of such stealing did use Bush knife to beat one **OMARY S/O HAMIS NGULUMA** in order to obtain the said property."

When this statement and particulars are critically considered in the light of the provision above it becomes obvious that it is flawless as it fully discloses the offence against which the appellant stood charged. It is well crafted such that it disclose the reasonable information as to the nature of the offence thereby enabling the appellant to understand the charge and to prepare his defence if any. It is not surprising why after these facts were read over to the accused and upon been required to plea, he did not mince words. He articulately pleaded that he injured the victim with a panga and robbed him Tshs 180,000/, hence a plea of guilty entered against him. That said, I entertain no flicker of doubt in my mind that the

accused entered the plea while fully aware of the nature of offence and its respective particulars.

Moreover, in my scrutiny of the record, I have found no impropriety as regards compliance with the requirements enlisted on the 4th and 5th conditions because, after the appellant's plea was entered, the detailed facts disclosing and establishing the important ingredients of the offence above stated, were read over and explained to him and after being required to answer he made the following admission: **"I admit all facts are true and correct."** The appellant did not utter any other word apart from those or any how contest any of the facts laid by the prosecution a fact which evidently demonstrates that he was sure of the facts he was admitting. It would appear that his complaint is a mere afterthought. Lastly on this point, it is on record that, after recording the admission, the trial court made a finding that the facts admitted constitute the offence charged and convicted the appellant. Generally, I see no impropriety or illegality in the appellant plea which I find to be unequivocal. The 2nd and 3rd ground of appeal consequently fails.

Reverting to the first ground of appeal which I had previously shelved, it is the appellant submission that the trial court offended the principles of natural justice as it abrogated his right to be heard. However, he rendered no explanation of how his right was abrogated, so as to assist the court in structuring its determination. Nevertheless, I will determine it. To start with, I unreservedly agree with him that the right to be heard is a fundamental right and a precursor to the right to fair trial which our constitution enviously protects not only in respect of accused person but

to all those who seek justice, be it criminal or civil. In criminal cases, the exercise of the right to a hearing and all matters pertaining to fair hearing are regulated by the Criminal Procedure Act which, among other things, affords each accused person the right to be heard at various stages of the criminal proceedings, the plea stage inclusive.

The plea taking state which is the foundation of any criminal trial, is undoubtedly a crucial stage at which the accused must fully exercise his right to be heard else, the whole proceedings/trial will be rendered a nullity. It is at this stage when the accused person enjoys/exercises his right to be heard by entering a plea to the charges facing him. The accused person's plea, when entered, will determine the next step and the extent to which he will exercise the right to be heard. A plea of guilty to the offence coupled by an admission to the particulars of the offence, operates as a waiver of the accused person's right to a full trial. As already stated, all what the court is required from the court in the event of such a plea is to comply with the enlisted procedures to ascertain if the appellant's plea is unequivocal. Since, as I have already held, the court dutifully complied with the requisite procedure and the appellant exercised his right of entering his plea and admitting to the charges, I cannot comprehend how his right to be heard was abrogated. Consequently, the first ground of appeal fails.

As to the 4th ground of this appeal, I will not waste time on it as it has been raised out of context as the offence of armed robbery is not a capital offence.

In totality of the above, I dismiss the appeal for want of merit as the appellant was properly convicted and sentenced. Accordingly, the trial court's conviction and sentence are upheld.

DATED and DELIVERED at MOSHI this 13th day of June 2023.

X _____

Signed by: J.L.MASABO

J.L. MASABO

JUDGE