THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

MBEYA DISTRICT REGISTRY

AT MBEYA

CRIMINAL APPEAL NO. 132 OF 2022

(Originating from Criminal Case No. 92 of 2019 f the Resident Magistrate's Court of Songwe at Vwawa.)

REMMY RASHID MARANDU .....APPELLANT

VERSUS

THE REPUBLIC ..... RESPONDENT

JUDGMENT

Date of last order: 7th March, 2023

Date of judgment: 10th March, 2023

NGUNYALE, J.

In this appeal, Remmy Rashid Marandu, the appellant and three others not subject to this appeal were charged before the Resident Magistrate Court of Songwe Region at Vwawa in Criminal Case No. 92 of 2019 on two counts of Burglary contrary to section 294(1)(a)(2) and stealing contrary to section 258(1)(2)(a) both of the Penal Code [Cap 16 R: E 2002 now R: E 2022] herein referred to as "the Code".

On the first count it was alleged that the appellant and three others on 26th day of July, 2019 at night time at Ichenyezya village within Mbozi

District in Songwe Region did break and entered into the house of one MARIAM D/O WAZIRI SUNGURA with intent to commit an offence therein. In the second count that on the same date at night time at Ichenjezya area within Mbozi District in Songwe Region after breaking and entering into the house of the said persons did steal one microwave, one brander machine, 4 water drams, one gas cooker make Hometech, 20 food plates and 15 spoons all total valued at Tshs l,080,000/=the property of one MARIAM D/O WAZIRI SUNGURA. When they were called upon to plea to the charge after the substance of the same had been explained to them, the appellant and other accused pleaded not guilty to both counts.

The proceedings were adjourned to other dates until on 09/10/2019 when the accused were reminded the charge, in reply thereto the appellant in the first count pleaded "**it is true I broke into the said house at night with intent to stealing therefore**" and to the second count that "**it is true I did steal the items mentioned from that house that I broke into**". The learned trial magistrate entered a plea of guilty against the appellant. Facts of the case were read and the appellant's reply was that "**all the facts as read are true and correct**". They then signed. Conviction was entered against the accused on both counts. The prosecution stated the aggravating factors and the appellant had nothing

in his mitigation. The trial Magistrate passed a sentenced in respect of the first count for twenty years imprisonment and five years for the second count. Sentence were ordered to run consecutively. It has to be noted that other accused persons pleaded not guilty and the charge against them was withdrawn by the prosecution in terms of section 98(a) of the Criminal Procedure Act [Cap 20 R: E 2002 now R: E 2022] "the CPA" on the subsequent dates.

Aggrieved, the appellant was late to filed a Petition of Appeal but he successfully obtained extension of time which now enabled him to lodge his appeal challenging the trial court decision on eight grounds, namely;

1. *THAT – the trial court erred in point of law and fact to convict and sentenced an appellant while the case was not proved beyond reasonable doubt.*
2. *THAT- the trial court had massively lost site in point of law and fact to convict an appellant without to give him right to know and to understand the charge against him so that he can intelligently answer them due to fact that most of Tanzanian lack awareness against the law. hence led him to enter into plea of guilty.*
3. *THAT- the appellant was convicted and sentenced on the expense of weak (defective) charge.*
4. *THAT - the records show that the appellant enter plea of not guilty at the same time shows plea of guilty which led doubtful in law.*
5. *That - the trial court erred in law and fact to discharge 2nd ,3rd and 4th accused and convicted 1st accused without to be summoned prosecution witness in order to prove the guilty as required by law.*

6. *THAT - the trial court erred in law and fact to convict and sentenced an appellant without to consider weak (Defective) memorandum of facts adduced by pp which is contrary to law.*
7. *THAT- the trial court erred in law and fact to convict and sentence an appellant without any exhibit produced before the trial court in order to prove the guilty.*
8. *THAT - the appellant did not arrest at the scene of crime*

When the appeal came up for hearing, the appellant appeared in person fending for himself. Mr. Mwakasege, learned State Attorney appeared for the respondent Republic.

When the appellant was called to elaborate his grounds of appeal, he opted the State Attorney to begin. Mr. Mwakasege submitted that the law prohibit appeal against own plea of guilty. On the first ground he said that there was no charge to be proved. On the second ground it was submitted that ignorance of law is not a proper defence. With regard to third ground, he said that there was no week evidence. On fourth ground he said that the appellant understood what he entered. The fifth ground that there were no witnesses called and that procedure of recording plea of guilt was followed, sixth that there were no defects in the facts. Seven that there were no exhibits tendered. He prayed the appeal to be dismissed.

During rejoinder the appellant prayed his grounds of appeal to be adopted and for justice be done. In his further submission he stated that when his statement was being recorded there were no relatives called to witness.

From the submission and record of appeal ordinarily in terms of section 360(1) of the CPA the appellant having pleaded guilty to the charge of burglary and stealing and accepting truth of supporting facts he was convicted. Conviction and sentence being entered against the appellant he has no right to appeal to the High Court except against illegality of sentence or otherwise. In this appeal the appellant was convicted and sentenced on his own plea of guilty. In law, for a plea of guilty to be valid for the purposes of conviction without trial under section 228(2) of the CPA it must meet the conditions set in the case of **Michael Adrian Chaki vs R**, Criminal Appeal No. 399 of 2017 (unreported) which must conjunctively exist. Namely:

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 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) o f the CPA;

4. *The facts adduced after recording a plea of guilty should disclose and establish all the elements of the offences 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 clear;*
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.*

In this appeal the appellant is not challenging the plea of guilty recorded being equivocal or the sentence imposed by the magistrate being illegal. Therefore, it is my settled view that the validity of the charge leading to conviction of the appellant is not questioned. The same applies to sentence imposed to the appellant.

The eminent question is that; does the appeal fit in the ambit of section 361(1) of the CPA or the law as expounded in the case of **Laurent Mpinga vs R,** [1983] TLR 166 and **Michael Adrian Chaki** case(supra). During submission the appellant wanted the court to consider his petition of appeal and to do justice to him. On the other hand, the respondent did not support the appeal and argued the same to be dismissed. At the outset I support the contention by the State Attorney that no appeal is allowed on own plea of guilty. That is the law and it has been the stance of the courts in this jurisdiction since then.

I have made a thorough scan to the petition of appeal; precisely the 1st, 2nd, 7th and 8th grounds of appeal deserved no consideration. Those grounds were relevant in a case which went to full trial which is not the case here. The appellant has misdirected himself in preparing the grounds of appeal which are incompatible with the case at hand. That said, grounds 1, 5, 7 and 8 are devoid of merit.

Regarding the second and third grounds that the appellant did not understand the charge for he is ignorant of the law and the charge was defective. It is the law that the accused should understand the gist of the case facing him, the charge must be properly drawn indicate the offence, section of the law and disclose all elements of the offence. Moreover, the substance of the charge must be explained to the accused and asked to plea thereto. See **Mussa Mwaikunda vs Republic** [2006] TLR 387. Although the appellant did not submit and explain on the two points. I have gone through the proceedings of the trial court for the purpose of clearing doubts. The charge reads;

> ***1ST COUNRT FOR ALL ACCUSED PERSONS***
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> ***STATEMENT OF THE OFFENCE:*** *Burglary c/s 294 (1) (a) (b) (2) of the Penal Code Cap. 16 Vol.1 of the Laws [R.E 2002]*
>
> ***PARTICULARS OF THE OFFENCE:*** *That REMMY S/O RASHID, PHILIPO S/O STEPHEN MWANGUKU, BAHATI S/O MUSSA MKOMA and FRANK S/O GOLIATI MWAIKENDA are jointly and together charged on 26th day of July,*

2019 at night time at Ichenyezya village within Mbozi District in Songwe Region did break and entered into the house of one MARIAM D/O WAZIRI SUNGURA with intent to commit an offence therein.

2ND COUNT FOR ALL ACCUSED PERSONS:

STATEMENT OF THE OFFENCE: *Stealing c/s 258(l)(2)(a) and265 of the|| Penal Code Cap. 16 Vol. 1 of Laws [R.E 2002].*

PARTICULARS OF THE OFFENCE: *That REMMY S/O RASHID MARANDU, PHILIPO S/O STEPHEN MWANGUKU, BAHATI S/OO MUSSA MKOMA and FRANK S/O GOLIATI MWAIKENDA are jointly and together charged on 26th day of July, 2019 at night time at Ichenjezya area within Mbozi District in Songwe Region after breaking and entering into the house of the said person did steal one microwave, one brander machine, 4 water drams, one gas cooker make Hometech, 20 food plates and 15 spoons all total valued at Tshs l,080,000/=the property of one MARIAM D/O WAZIRI SUNGURA*

Going by the law section 294(1)(2) of the code which creates the offence of burglary reads;

294.-(1) Any person who-

(a) breaks and enters any building, tent or vessel used as a human dwelling with intent to commit an offence therein;

(b) N/A

(2) Where an offence under this section is committed in the night, it is burglary and the offender is liable to imprisonment for twenty years.

For the offence of burglary to stand it must be committed at night or night- time. The term Night or night-time is defined by section 5 of the Code to mean the period, between seven o'clock in the evening, and

six o'clock in the morning. The charge is clear that the offence was committed at night time where the appellant did break and entered the house to which now the appellant admitted.

Regarding the second count of stealing section 258(1)(2)(a) read-

> *(1) A person who fraudulently and without claim of right takes anything capable of being stolen, or fraudulently converts to the use of any person other than the general or special owner thereof anything capable of being stolen, steals that thing.*
>
> *(2) A person who takes or converts anything capable of being stolen is deemed to do so fraudulently if he does so with any of the following intents, that is to say-*
>
> *(a) an intent permanently to deprive the general or special owner of the thing of it.*

The facts of the case which were read to the appellant were just the reproduction of the particulars of the offence to which the appellant pleaded guilty unambiguously. In my view all the conditions laid in the case of **Michael Adrian Chaki** (supra) were met in this case. The complaint that he could not understand the charge is not supported by the records before the trial court. Therefore, ground 2 and 3 are dismissed.

The fourth ground is about change of the plea. In law the accused person can change his plea at any time before judgment. As pointed out earlier

the accused on the first day he was arraigned entered a plea of not guilty to the charge and on the later dates when the charge was reminded to him, he changed his plea to that of guilty. The substance of the preferred charge was read to the appellant and then the prosecution narrated facts of the case. Upon reading the facts by the prosecution the appellant made a reply that they were true and correct. The appellant freely changed his plea from that of not guilty to that of guilty so, he cannot be heard to complain. The fourth ground is dismissed.

The sixth complaint is on defective memorandum of agreed facts. In law when the accused plea guilty to the charge and a plea of guilty recorded what is read to the accused is facts of the case and not memorandum of agreed facts as in this case. I find the anomaly not fatal because what is contained therein is the facts of the case and the appellant was asked to make his reply to which he unequivocally said "all the facts as read are true and correct" he then signed and the public prosecutor did too. Therefore, the procedures explained in the case of **Adan vs Republic** (1973) EA 445 was not flawed in this case. The same is dismissed.

As a whole then, and from what I have keenly endeavoured to discuss above and in terms of section 360(1) of the CPA, I find the appeal to be devoid of merits and it is hereby dismissed.

Dated at Mbeya this 10th day of March, 2023

D.P. Ngunyale
Judge

Judgement delivered this 10th day of March 2023 in presence of the appellant in person and the respondent represented by Stephen Rusibamayira learned State Attorney.

D.P. Ngunyale
Judge