

THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

MBEYA DISTRICT REGISTRY

AT MBEYA

CRIMINAL APPEAL NO. 160 OF 2022

(Originating from Criminal Case No. 94 of 2022 of the District Court of Mbeya.)

BAHATI KAFWILE NGOLE@ FURAHAAPPELLANT

VERSUS

THE REPUBLICRESPONDENT

JUDGMENT

Date of last order: 25/4/2023

Date of Judgment 22/5/2023

Nongwa, J.

In the district court of Mbeya, the appellant Bahati Kafwile Ngole @ Furaha was arraigned alongside with three others not party to this appeal with the offence of armed robbery contrary to section 287A of the Penal Code [Cap 16 R: E 2019. He was convicted on his own plea of guilty and sentenced to thirty years imprisonment.

It was alleged that on 21st day of May, 2022 at Iwambi area within the district and city of Mbeya the appellant did steal one mobile phone make Samsung A-12 worth Tanzania shilling four hundred and eight thousand only (480,000) and cash Tanzania shilling seventy thousand

(TZS. 7,000/=) all being the property of one ANITHA D/O MANYONGA and immediately before stealing those properties he used iron bar to hit her on her head in order to obtain and retain such properties.

At the hearing of the case before the district court, conducted on 16/6/2022, the appellant entered a plea of guilty, after the charge being read over to him. On 29th June, 2022 the appellant was reminded the charge, again he pleaded guilty. Upon the prosecution narrating the facts constituting his case, the district court was satisfied that the appellant unequivocally admitted the facts. Consequently, the court convicted him of the offence, and sentenced him as indicated above. Aggrieved, the appellant is before this Court with two points of grievances in the petition of appeal;

1. *'That the trial court erred in law and when convicted and sentenced the appellant without taking into account that failure to the prosecution to tendered the stolen properties which was found in the hands of the appellant the plea was imperfect, ambiguous and unfinished for that reason the lower court erred in law in treating as a plea of guilty.*
2. *That the trial court erred in law when convicted and sentenced the appellant without taking into account that no anywhere during the*

plea where the appellant mentioned other accused as he sold such items to them this means that the pleas was the result of mistake'.

When the appeal was due for hearing, the appellant appeared in person while the Respondent was represented by two learned State Attorneys Ms. Xaveria Makombe and Mr. Rajab Msemo. The two did not support the appeal.

It was Mr. Rajab Msemo's argument that with reference to case law, **Joel Mwangambako vs. Republic**, Criminal Appeal No. 516/2017 at page 12, the records of trial court page 2 of proceedings the appellant pleaded guilty with explanation, the facts were read to him and without hesitancy he admitted to the facts with clarification then he was convicted. That, it is not a requirement of the law to tender exhibits where an accused person has pleaded guilty.

Mr. Rajab argued further that the appellant's claims that the plea was equivocal is baseless, citing section 360 (1) of Criminal Procedure Act the State Attorney said that no appeal shall lie on plea of guilty except on legality of sentence and exceptions provided for under **Lawrence Mpinga vs. Republic 1993 TLR 186.**

Mr. Rajab insisted that the plea of the appellant at the trial court was complete and perfect and well understood. The appellant clearly and without any ambiguity pleaded guilty, therefore there ~~were~~ no

misapprehension and the charges were well known before the law, that is armed robbery c/s 287A of the Penal Code Cap 16, were read to him in a language he understood. The facts clearly established the offence of armed robbery and all ingredients were there of which he admitted that the facts were correct as seen in pages 2, 3, 4 and 5 of the proceedings of lower court. Mr. Rajab concluded that all the grounds have no merit, decision of lower court be upheld. The appellant had no rejoinder.

After reading the above grounds and submission of the Respondent, the only issue is **whether the plea of the appellant to the offence charged was unequivocal.**

Section 360 (1) of the Criminal Procedure Act [Cap 20 R: E 2022] as a general rule, bars entertainment of an appeal against a conviction based on a plea of guilty except to the extent or legality of the sentence imposed. That provision states 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.'

Notwithstanding the above provision, an appeal against conviction on a plea of guilty may be entertained under certain circumstances, as an

exception to the general rule. The circumstances were stated in the case of **Laurence Mpinga vs R** [1983] TLR 166 that;

*'an accused person who has been convicted by any court of an offence "on his own plea of guilty" may appeal against the conviction to a higher court on any of the following grounds; **one;** that, even taking into consideration the 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 guilty, **two;** that he pleaded guilty as a result of mistake or misapprehension, **three;** that the charge laid at his door disclosed no offence known to law and **four;** that upon the admitted facts he could not in law have been convicted of the offence charged.'*

Never the less, what constitutes an equivocal plea of guilty has been discussed also in a book by **B.D. Chipeta**, Magistrates Manual 3rd Edition, 2010 that;

*'An equivocal plea simply means an ambiguous or vague plea that is a plea in which it is not clear whether the accused denies or admits the truth of the charge. Pleas in such term as "**I admit**" "**nilikosa**" or "**that is correct**" and the like, though prima facie appear to be pleas of guilty may not*

necessarily be so. In fact, invariably such pleas are equivocal."

*From the above extract, it could be said that, an equivocal plea of guilty is an ambiguous plea which is capable of having more than one interpretation' (**emphasis supplied**).*

In this matter, from the trial court records it is clearly shown that, on 16/6/2022 before the court when the accused was first arraigned pleaded guilty to the offence. On 29/6/2022 when the charge was reminded to him, he pleaded by stating that; *'ni kweli nilifanya kosa la unyang'ani na kuiba simu na pesa.'* The prosecution then re-counted facts of the case and the accused is recorded to have replied thereto that; *'maelezo yote yaliyosomwa kwa lugha ninayoifahamu ya Kiswahili ni sahihi kabisa'.*

For the charge of armed robbery to stand two important elements must be disclosed **one**; stealing and **two**; use of offensive weapon to obtain property which must be directed to a person and name disclosed. From the charge and facts narrated all ingredients of the offence was disclosed to wit that the appellant stolen the phone and money and used iron bar to Anitha Manyonga in order to obtain the properties. Given the above, the facts narrated did clearly establish all ingredients of the offence charged. Further, the appellant's admission of the facts narrated was genuine and freely made amounting to an unequivocal plea of guilty. The/

conditions underscored in **Laurence Mpinga** (supra) were not met. The appeal is an afterthought and misconceived

The above would have been sufficient to dispose the complaint against conviction on the appellant's plea of guilty. However, I find it necessary to address the issue of failure to tender stolen properties. It is not the requirement of the law to tender exhibits where an accused person offer plea of guilty to the offence. In **Frank Mlyuka vs R**, Criminal Appeal No. 404 of 2018 (unreported) had occasion to deal with similar complaint, it held that;

'...tendering of exhibits where conviction is based on a plea of guilty, is not a legal requirement.'

In the case of **Emmanuel Ambrous vs The Republic**, Criminal Appeal No. 555 Of 2017, CAT at Arusha (Unreported) the court stated;

*'Once the appellant has pleaded guilty and then admitted the facts of the case that disclosed all the elements of the charged offence, his plea would be considered unequivocal. Indeed, the applicable procedure when an accused person pleads guilty to a charged offence, as stated in numerous decisions of the Court, **involves no production of proof of the charge but a procedure for ascertaining if the appellant's plea is unequivocal.**' [emphasize supplied]*

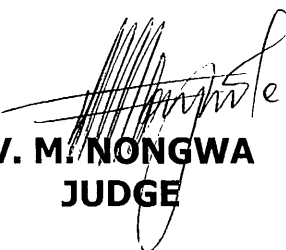
The same in the instance appeal, the appellant having pleaded that he committed the offence charged, admitted all facts of the case which constituted ingredients of the offence, he submitted himself to be ready for the consequences. The prosecution was therefore relieved from calling witnesses and tendering documentary and physical exhibits as proof of the case.

It is the findings of this court that, it was safe for the trial Magistrate to convict and sentence the appellant on his own plea of guilty. From the foregoing above, it is my verdict that the plea of the appellant was unequivocal and the appellant is barred under section 360(1) of the Criminal Procedure Act, Cap 20 R.E 2022.

The appeal is unmerited consequently it is hereby dismissed.

Dated and Delivered at MBEYA this 22nd May, 2023




V. M. NONGWA
JUDGE