

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

**ARUSHA DISTRICT REGISTRY**

**AT ARUSHA**

**CRIMINAL APPEAL NO. 122 OF 2022**

*(C/f Criminal Case No. 154 of 2021 District Court of Karatu at Karatu)*

**GITEU GIDAMARI JENGDA @ DARABE ..... APPELLANT**

**VERSUS**

**THE DPP ..... RESPONDENT**

**JUDGMENT**

22<sup>nd</sup> & 25<sup>th</sup> May, 2023

**WIGANGA, J.**

This appeal emanates from the decision District Court of Karatu (the trial court) where the appellant was arraigned for the offense of Armed Robbery contrary to section 287A of the Penal Code [Cap 16 R.E 2019] now (R.E 2022). He was found guilty on his plea, convicted, and consequently sentenced to thirty years of jail imprisonment. Dissatisfied by both the conviction and sentence, he filed four grounds of appeal which are as follows:-

1. That the learned Magistrate erred to convict the appellant on a plea which is unsatisfactory and equivocal.

2. That, the judgment of the learned Magistrate offends section 312(2) of the CPA, thus it should not stand
3. That, the appellant's plea of guilty to the offence of robbery is impaired and rendered nugatory as the fact pleaded to do not disclose the ingredient of the threat and to whom the threat was directed, which is an important element in establishing the offence of robbery
4. That, upon the admitted facts the appellant could not in law have been convicted of the offence of robbery as the prosecution failed to prove the charge beyond reasonable doubts.

He insistently prayed that the appeal be allowed, the conviction be quashed and the sentence be set aside.

At the hearing of the appeal, the appellant fended for himself as he was unrepresented, while the respondent Republic was represented by Ms. Witness Mhosole assisted by Ms. Caroline Asenga both learned State Attorneys.

During the hearing of the appeal, the appellant informed the court that he does not know how to read and write, but he had his paper on which he had his ground of appeal explained, therefore he asked the court to receive his paper and adopt its content as his submission and rely on the same in

deciding the appeal. That request was not objected to by the learned State Attorney, they said the same be received and they would rely on the same in their reply.

In the submission as contained in that paper, the appellant said that his plea was incomplete, uncertain, and equivocal, it is not certain as to what he pleaded. On that, he referred this court to the case of **Juma Tumbiliya & 2 Others vs The Republic** [1998] TLR 139.

Further to that, he submitted that, even the facts which were read to him did not disclose the offence which he was charged with. Therefore his response to the facts did not mean that, he was actually pleading guilty to the offence of Armed Robbery. On that, he referred this court to the case of **Zefania Siame vs The Republic** [2016] TLR 326.

Submitting on the third ground of appeal, he said the trial Magistrate did not comply with the provision of section 312 (2) of the Criminal Procedure Act [Cap. 20 R.E 2022] and lastly, the case against the appellant was not proved beyond reasonable doubts because there are no exhibits tendered to prove the case at the allegations against him. He cited the case of **Said Hemed vs The Republic**, [1987] TLR 117. She in the end asked the court to allow his appeal and to acquit him.

The respondent, Republic vide Ms. Witness Mhosole, learned State Attorney conceded to the grounds of appeal, and she prayed for the appeal to be allowed. However, she asked the court to order for retrial under section 338 of the Criminal Procedure Act (supra), so that the case can be heard on the merits

Now, having considered the ground of appeal and the submissions by the parties, it is apparent that the grounds of appeal seeks to challenge both, the conviction and the sentence. The conviction is challenged on the ground that, the plea of guilty upon which the conviction is based is incomplete, uncertain, and equivocal, it is not certain as to what he pleaded. On that, he referred this court to the case of **Juma Tumbilija & 2 Others vs The Republic** [1998] TLR 139. The second base of the appeal is that, even the fact purportedly constituting the offence did not actually disclose the offence which he was charged with. Therefore his response to the facts did not mean that he was actually pleading guilty to the offence of Armed Robbery. On that, he referred this court to the case of **Zefania Siame vs The Republic** [2016] TLR 326.

Submitting on the third ground of appeal, he said the trial Magistrate did not comply with the provision of section 312 (2) of the Criminal Procedure Act

[Cap. 20 R.E 2022] and lastly, the case against the appellant was not proved beyond reasonable doubt because there are no exhibits tendered to prove the case at the allegations against him. He cited the case of **Said Hemed vs The Republic**, [1987] TLR 117.

Now generally, regarding the appeal against the conviction entered on the plea of guilty section 360(1) of the Criminal Procedure Act, [Cap 20 R.E 2022] (the CPA) provides that; an appeal shall not be allowed in the case of any accused person who has pleaded guilty and has been convicted on such a plea by a subordinate Court except as to the extent or legality of the sentence. This has been interpreted in a plethora of cases one of them being the case of **Frank Mlyuka vs The Republic**, Criminal Appeal No. 404 of 2018 (unreported). Nonetheless, it is also the position of the law as propounded by the decisions of the Court of Appeal that under certain circumstances, an appeal may be entertained notwithstanding a plea of guilty.

To this end, in the case of **Laurent Mpinga vs. The Republic** [1983] TLR 166, a decision of the High Court which was affirmed by this Court of Appeal in the case of **Kalos Punda vs. The Republic**, Criminal Appeal No. 153 of 2005 (unreported), it was stated as follows: -

*"An accused person who has been convicted by any court of an offence on his plea of guilty may appeal against the conviction to a higher court on any of the following grounds:*

*-*

- 1. 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;*
- 2. That, he pleaded guilty as a result of a mistake or misapprehension;*
- 3. That, the charge laid at his door disclosed no offence known to law; and*
- 4. That, upon the admitted facts he could not in law have been convicted of the offence charged."*

Not only that but also the Court of Appeal went on and held that:

*"Noteworthy, earlier on the Court in **Khalid Athuman vs. The Republic**, Criminal Appeal No. 103 of 2005 (unreported) adopted a similar proposition laid in the English decision of **Rex v. Forder** (1923) 2KB 400 which propounded that: -*

*"A plea of guilty having been recorded; this Court can only entertain an appeal against conviction if it appears (1) that the appellant did not appreciate the nature of the charge or did not intend to admit he was guilty of it or (2) that upon the admitted facts he*

*could not in law have been convicted of the offence charged."*

The court went further and held that,

*"On the other hand, section 228 (1) and (2) of the CPA deals with the plea of the accused who is arraigned before a court and sets the following procedure to be followed by trial courts:*

- (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.*
- (2) If 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."*

Further stressing the point, the court relied on its earlier decision in the case of **John Fava vs. The Republic**, Criminal Appeal No. 198 of 2007 (unreported) the Court emphasized that: -

*"In every case in which a conviction is likely to proceed on a plea of guilty, it is most desirable not only that every constituent of the charge should be explained to the accused but that he should be required to admit every constituent of the offence and that what he says should be*

*recorded and in the form in which will satisfy an appeal court that he fully understood the charge and pleaded to every element".*

In the case of **Joseph Mahona @ Joseph Mboje @ Maqembe Mboje vs The Republic**, Criminal Appeal No. 541 of 2015 – CAT Tabora, it was held inter alia that;

*"The procedure on how to record pleas of guilty, was clearly set out in **ADAN vs R.** (1973), EA445 at 446. There are five steps:-*

- (i) The charge and all the ingredients of the offence should be explained to the accused in his language or in a language he understands.*
- (ii) The accused's own words should be recorded and if they are an admission, a plea of guilty should be recorded;*
- (iii) The prosecution should then immediately state the facts and the accused should be given an opportunity to dispute or explain the facts or to add any relevant facts.***
- (iv) If the accused does not agree with the fact or raises any question of his guilt, his reply must be recorded and a change of plea entered.***



(v) *If there is no change of plea, a conviction should be recorded and a statement of the facts relevant to the sentence together with the accused's reply should be recorded.* "[**Emphasis added**]"

In this case, when the charge was read to the accused person he responded " *Ni Kweli.* " That was followed by his response seemingly to the fact of the case. However, the record does not show the facts he was responding to. The record shows only answers but not facts which he was answering. That means the procedure as laid down in the case of **Joseph Mahona @ Joseph Mboje @ Magembe Mboje vs The Republic**, (supra) was flouted. That affect the plea, therefore there were no materials upon which the court could have found the accused guilty and convicted him. Instead, it was supposed to enter the plea of not guilty and required the prosecution to call the witness to prove the charge.

That being the case, I find the plea of guilty was improperly entered, I thus quash the conviction and set aside the sentence of thirty years passed by the trial court. I thus substitute the plea of guilty to that of not guilty and direct the matter to be remitted to the trial court to be heard on merit by the prosecution calling their witnesses to prove the case against the accused person.

It is accordingly ordered.

**DATED** and delivered at **ARUSHA** this 25<sup>th</sup> day of May 2023



  
**J.C. TIGANGA**

**JUDGE**