

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE SUB-REGISTRY OF SONGEA**

**AT SONGEA**

**CRIMINAL APPEAL NO. 18 OF 2023**

**DAUDI s/o ELIAS @ MLOPE ..... APPELLANT**

**VERSUS**

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

**(Originating from the decision of the District Court of Tunduru at Tunduru in  
Criminal Case No. 65 of 2023)**

**JUDGMENT**

23<sup>rd</sup> June & 10<sup>th</sup> July, 2023

**KISANYA, J.:**

The appellant was convicted by the District Court of Tunduru on his own plea of guilty to the offences of house breaking, contrary to section 294(1)(a)(b) of the Penal Code, Cap. 16, R.E. 2022 and stealing contrary to section 265 of the Penal Code (*supra*). He was then sentenced to five years imprisonment on both counts.

It is pertinent to note here that, when the charge was read over to the appellant before the trial court, he voluntarily pleaded guilty to both counts. On that account, the learned trial magistrate recorded the appellant's reply to both counts as a plea of guilty. Thereafter, the trial court conducted a preliminary hearing, whereupon the appellant was called upon to state facts

which were not in dispute. There and then, the prosecution tendered three exhibits namely, certificate of seizure, cautioned statement and a subwoofer which were admitted in evidence as Exhibits P1, P2 and P3 respectively. As a result, the appellant was convicted and sentenced as stated afore.

Aggrieved, the appellant has come to this Court on appeal. His main ground of complaint is that the proceedings before the court of first instance were hurried and that he was not given sufficient time to digest on the facts read over to him.

During the hearing of this appeal, the appellant appeared in person. On the other side, the respondent was represented by Ms. Lucia Bukuku, learned State Attorney. In view of what transpired before the court of first instance, I probed the parties to address the Court on whether the appellant's plea was unequivocal and whether the procedures of convicting the appellant on plea of guilty were duly complied with.

Upon being invited to submit in support of his appeal, the appellant just asked this Court to consider the grounds of appeal as stated in his petition of appeal. He told this Court that he would respond after hearing the learned State Attorney.

Upon taking floor, Ms. Bukuku submitted that section 360 of the Criminal Procedure Act, Cap. 20, R.E. 2022 (henceforth "the CPA) bars an appeal against conviction founded on a plea of guilty. She further referred the Court to the case of **Laurent Mpinga vs R** [1983] TLR 166 in which this Court (Samata, J., as he then was) held that an appeal against conviction based on a plea of guilty may be based on the following grounds:

1. *That, even taking into consideration the admitted fact 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, the plea of guilty was as a result of 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.*

The learned State Attorney went on to submit that this appeal is not based on any of the above grounds and thus, not meritorious.

As for the grounds of appeal, Ms. Bukuku submitted that the procedures of taking plea are set forth under section 228 of the CPA as; one, reading over and explaining the charge to the accused person; and

convicting the accused person after pleading guilty to the offence. The learned State Attorney was firm that, the appellant was convicted according to the law. For that reason, Ms. Bukuku contended that the proceedings were not hurried and that the appellant was given time to respond to the charge.

With regards to the issues raised by the Court, the learned State Attorney reiterated her submission that section 228 of the CPA was complied with. She was of the firm view that the appellant's plea was unequivocal. On the foregoing, Ms. Bukuku moved this Court to dismiss the appeal for want of merit.

In his rejoinder submission, the appellant urged this Court to satisfy itself on whether the procedures were complied with.

I agree with the learned State Attorney that, in terms of section 228 (2) of the CPA, it is the duty of the court to enter a conviction without awaiting a trial of the accused person who readily admits the charge which is read over and explained to him. See also the case of **Onesmo Alex Ngimba vs R**, Criminal Appeal No. 157 of 2019 (unreported), in which the Court of Appeal had this to say on section 228 of the CPA:

*"In terms of the above provision, where an accused person pleads guilty to the charge read over to him, the court has no option but to convict him and pass a sentence without trial."*

I have scrutinized the record subject to this appeal. Having done so, I am satisfied that the appellant offered a plea of guilty to the charge. In that regard, the ground of complaint that the proceedings were hurried lacks merit. It was the duty of the trial court to convict him but after being satisfied that the appellant's plea was unequivocal.

This give rise to the issues raised by the Court, whether the appellant's plea was taken in accordance with the law and whether his plea was unequivocal. Ms. Bukuku held the view that the plea was unequivocal and that it was taken in accordance with the law. At the outset, I am alive to the position that, an appeal against conviction premised on a plea of guilty is barred under section 360 of the CPA, unless it is against the sentence. However, in view of plethora of authorities, including the case of **Laurent Mpinga** (*supra*), one of the grounds upon which an appeal against conviction based on a plea of guilty may stand is where the plea was imperfect, ambiguous or unfinished. For a plea to be held unequivocal, it

must meet the following conditions stated in the case of **Michael Adrian Chaki vs R**, Criminal Appeal No. 399 of 2017 (unreported):

- 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 clear (see **Akbarali Damji vs R**. 2 TLR137 cited by the Court in **Thuway Akoonay vs Republic** [1987] T.L.R. 92);*

*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 the present case, the record bears it out that, upon recording the appellant's plea to the charge, the learned magistrate of the court of first instance conducted a preliminary hearing where upon the appellant was to state facts which he is not disputing. Reading from the record, I am of the humble view the fourth, fifth and sixth conditions stated in **Michael Adrian Chaki** (*supra*) were not complied with due to the following reasons.

**One**, the procedure of conducting preliminary hearing was not envisaged under section 228 of the CPA. It is conducted under section 192 of the CPA with view of ascertaining the undisputed facts.

**Two**, the appellant did not respond to every ingredient of the offence laid against him as follows. On the first count of house breaking, the appellant did not admit to have entered into the house of Hawa Hassan with intent to commit offence therein. As for the second count, nothing to suggest that the appellant admitted the fact that the stolen subwoofer was the property of Hawa Hassan. It follows therefore, that the appellant did not admit to every ingredient of the offences of house breaking and stealing.

Otherwise, the appellant's response to the facts exhibits he did not appreciate the ingredients of the offences of house breaking and stealing preferred against him.

**Three,** the certificate of seizure and caution statement were tendered after the appellant had responded to the facts and were read over to him. Thus, the appellant was not made to understand what was contained in the documentary exhibits tendered by the prosecution.

With the foregoing findings, I am of the view that it will be unfair to hold that the appellant's plea to both counts was unequivocal.

In the final analysis, I allow the appeal. Consequently, I employ the revisionary powers of this Court by quashing and setting aside the proceedings for preliminary hearing, the conviction and the sentences of the trial court.

As for the way forward, I find it apposite to order that the case file be remitted to the trial court for trial before another magistrate with competent jurisdiction. In the event the appellant is convicted in the subsequent proceedings, the trial court is directed to deduct the time he has spent in prison serving the sentence subject to this appeal. In the meantime, the



appellant shall remain in custody. Upon appearing before the trial court, the appellant may wish to apply for pending trial in accordance with the law.

It is so ordered.

**DATED** at **SONGEA** this 10<sup>th</sup> day of July, 2023.



S.E. KISANYA  
**JUDGE**

Judgment delivered this 10<sup>th</sup> day of July, 2023 in the presence of the appellant and Mr. Gaston Mapunda, learned State Attorney for the Respondent.

Right of appeal explained.



S.E. KISANYA  
**JUDGE**  
10/07/2023

