

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

**CRIMINAL APPEAL NO. 60 OF 2023**

*(Originating from Criminal Case No. 07 of 2023)*

**GABRIEL SIMON-----APPELLANT**

**VERSUS**

**THE REPUBLIC-----RESPONDENT**

**JUDGMENT**

*17<sup>th</sup> July & 1<sup>st</sup> Sept, 2023*

**ITEMBA, J.**

The appellant, Gabriel Simon was charged before the District Court of Mbogwe, with the offence of Stealing by Agent contrary to section 273(b) of the Penal Code Cap 16 RE: 2022. The prosecution alleged that, on an unknown dates between October 2022 and 17 January 2023, at Lulembela village Mbogwe District in Geita Region the appellant did steal Tshs. 4,122,200/= through POS Machine No. 359457090508945 which he was entrusted by Mbogwe District Council to collect revenue. He pleaded guilty to the offence and he was consequently convicted on his own plea. Subsequently, he was sentenced to five years (5) jail term. Aggrieved, with both conviction and sentence the appellant filed this appeal with six grounds as follows.

- i. That the trial Magistrate court erred in law and facts to convict the Appellant whereas the Prosecution side has*



- failed to prove fully that the Appellant committed the offence of Stealing by Agent beyond reasonable doubt.*
- ii. That the trial Magistrate court erred in law and facts in convicting the appellant by basing plea of guilty given by Appellant which were misunderstanding and unfinished.*
  - iii. That the Trial Magistrate court erred in law and facts to convict the Appellant without considering that the Appellant informed the matter of the POS machine with reg.359457098945 that has a problem. But Mbogwe District Council didn't make any follow up that problem which cause the loss of Tsh.4,122,200/=*
  - iv. That the Trial Magistrate court erred in law and facts to convict the Appellant by using Hearsay Evidence brought by Prosecution side, thus no any Witnesses who came in the Trial Court to prove the offence.*
  - v. That the Procedure in this case was not followed according the Law.*

At the hearing, the appellant appeared in person unrepresented while the Respondent had a service of Ms. Ghathi Mathayo, Messrs Ibrahim Salim and Evans Kaiza all State Attorneys.

The appellant was the first to submit on his appeal. Generally, he denied stealing the District Councils' money and claimed that it was a loss he incurred while doing his work as a revenue collector using the POS Machine. He added that he reported the loss to leader who was working on it and upon his transfer, the new leader who assumed the office took



him to the police where he was beaten, charged and convicted on the same day. He prays for the appeal to be allowed.

Responding to the appellant's grounds of appeal, Mr. Salum State attorney started by supporting the appeal for the reasons that there were challenges on the trial court as the appellant's plea was equivocal. Referring to page two of the typed proceedings, he claims that the appellant did not enter a plea against every issue alleged by prosecution. Supporting his argument, he refer he court to the case of **Michael A. Chaki vs R, Criminal appeal No. 399 of 2019** where the Court of Appeal insisted that every issue must be read to the appellant and he must enter a plea to each. He therefore prays for retrial so that the procedure could be adhered.

After his submissions, the court probed Mr. Salum State Attorney to go through the court records and recheck if the plea was infact equivocal. After a while Mr. Salum quickly came up with another version and told the court that, the plea was unequivocal as it contained all the elements of the offence. That the accused gave a general plea which contains all issues therefore the appellant understood the charge. When asked by the court to comment on the sentence, Mr. Salim, State Attorney avered that the sentence of five (5) years imprisonment was improper for the section provides for 10 years and this court can change the sentence.



In the determination of this appeal, the issue is whether this appeal has merit. From the submissions both the appellant and the respondent did not submit according to the grounds of appeal based on the fact that the appeal was a result of a plea of guilty. It is crucial to state the position of the law regulating the appeals of this nature. In terms of section 360 (1) of the Criminal Procedure Act, [Cap 20 R.E 2019] no appeal is allowed where the accused person is convicted on his own plea of guilty, except as to the extent of legality of the sentence.

This position was emphasised in the case of **Laurence Mpinga vs Republic** [1983] TLR 166 where it was held that:-

- I. *"An appeal against a conviction based on an unequivocal plea of guilty generally cannot be sustained, although an appeal against sentence may stand;*
- II. *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:*
  - a) *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;*
  - b) *That he pleaded guilty as a result of mistake or misapprehension;*



- c) That the charge laid at his door disclosed no offence known to law; and*
- d) That upon the admitted facts he could not in law have been convicted of the offence charged.*

Based on the principle of law ascribed above, I will first determine whether the appellant's plea was unequivocal. As it appears in the records, the state attorney had two positions. He first supported the appeal claiming that the plea was equivocal and when probed by the court to go through the court records he came up with another opinion that the plea was unequivocal and the appellant was properly convicted. On the side of the appellant, as mentioned he did not submit according to his grounds of appeal though on his second ground of appeal, he claims that he was convicted on his own plea of guilty which was entered based on misunderstanding.

Section 228(2) of the Criminal Procedure Act (Cap. 20 R.E. 2019) stipulates that:-

*"(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,"*

Going through the trial court records, the appellant was arraigned before Mbogwe District Court on 02.02.2023 and after the charge was read to him he answered as: -



*"Ni kweli niliiba kiasi hicho cha pesa shilingi 4,122,200/ -  
kupitia poss machine ya halmashauri ya Mbogwe."*

**COURT;** Plea of guilty entered

**02.02.2023**

Meanining that. It is true I stole the said amount 4,122,200/= through  
Pos Machine of Mbogwe Council The case was adjourned for several times  
and on 20.03.2023, the charge was again read over to the accused person  
who maintained his plea of guilty as I also quote: -

*"Ni kweli niliiba kiasi hicho cha pesa shilingi 4,122,200/ -  
kupitia poss machine ya halmashauri ya Mbogwe."*

**COURT;** Plea of guilty entered

**20.03.2023**

The court proceeded with the Preliminary Hearing and after all the facts  
were read to the accused person, he further admitted as follows.

*"I admit all facts by prosecution side that I stole money Tshs  
4,122,200/= through pos machine which I was supposed to  
deposit as government revenue but I stole the said money"*

**20.03.2023**

The accused person was convicted on his own plea and he kept on  
admitting even in his mitigation, he gave reason for him to steal the  
money was to help his mother who was sick.

Based on the records of the trial court, I am settled that the  
appellant was convicted on his own plea of guilty which was unequivocal



for the following reason First when the preliminary hearing was conducted, the appellant admitted all the facts read to him by the prosecution which gave details of the offence charged. Second, when he entered a plea of guilty, the appellant repeated all the ingredients of the offence charged and as such, the appellant understood the nature of the charges.

Third, the appellant maintained his plea of guilty which he pleaded on 02.02.2023 again, on 20.03.2023. Lastly, the appellant in his mitigation, gave reasons for stealing the money entrusted to him that he used for the treatment of his sick mother. Given the circumstances, there is no doubt that the appellant was convicted on his own unequivocal and unblemished plea of guilty. In terms of section 360 (1) of the CPA the appellant was barred to appeal against conviction which resulted from his own plea of guilty except on the severity of the sentence.

This takes me to the issue whether the sentence rendered to the appellant was proper and according to the law. The appellant was sentenced for five years imprisonment. The provisions of section 271 of the Penal Code Cap. 16 RE: 2022 provides that when the offender is found guilty, he is liable to the imprisonment for 10 years.

In this matter, the records are clear that after the appellant was convicted, the prosecutor had no aggravating factors against him and





intimated the trial court that the appellant had no previous criminal records. Then, the appellant gave the mitigation factors giving his reasons as to why the court has to be lenient on the sentence. As I go through the records, I find that the sentence was proper because the trial magistrate exercised her discretion judicially based on the reasons that the appellant was the first offender who pleaded guilty to the charge.

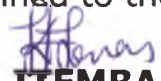
In fine, the appeal is therefore without merit and is accordingly dismissed in its entirety. It is so ordered.

Dated at Mwanza this 1<sup>st</sup> Day of September, 2023

  
**L. J. ITEMBA**  
**JUDGE**



The Right of Appeal is explained to the parties.

  
**L. J. ITEMBA**  
**JUDGE**  
**01.09.2023**

Judgement delivered today 01 September 2023, in the presence of the Appellant and Mr. Evans Kaiza, SA and Ms. G. Mnjari RMA.

  
**L. J. ITEMBA**  
**JUDGE**