

IN THE COURT OF THE UNITED REPUBLIC OF TANZANIA

THE SUB-REGISTRY OF TABORA

DC. CRIMINAL APPEAL NO. 37 OF 2023

*(Originating from Nzega District Court in Criminal
Case No. 73/2020)*

MHOJA D/O ZENGO @ WASHA APPELLANT

VERSUS

THE REPUBLICRESPONDENT

JUDGMENT

Date: 4/9/2023 & 8/9/2023

BAHATI SALEMA, J.:

In the District Court of Uyui at Isikizya Tabora, the appellant herein, **MHOJA D/O ZENGO @ WASHA** was arraigned and charged with Cattle theft contrary to section 268(1) of **the Penal Code**, Cap.16 [R.E 2022]. The appellant pleaded guilty to the charge. The trial court convicted him upon his guilty plea and sentenced him to serve 5 years imprisonment.

Dissatisfied with both conviction and sentence, appealed to this Court armed with three grounds of appeal that;

- i. The case for the prosecution was not proved, against the appellant beyond reasonable doubt as required by the law.*
- ii. The plea of guilty by the appellant was ambiguous and equivocal.*
- iii. The facts of the case put to the appellant by the state attorney, do not disclose the essential fact of whether the complainant identified and*

owned the alleged stolen cattle as proof of the doctrine of recent possession upon which the case for the prosecution hinges.

The appellant prays this Hon. High Court to allow the appeal, quash the conviction, set aside the sentence and order for the appellant's release from prison custody.

When the matter was called on for hearing, the appellant appeared in person. On the other hand, the respondent was represented by Ms. Wivina Rwebangira, Mr. Dickson Swai, and Mr. Charles Magonza, both learned State Attorneys.

Before we could start the hearing, the appellant was speaking Sukuma language and denied speaking Swahili language which necessitated this court to invite the interpreter Peter Nestory, 52 years, Tehama, Christian who was sworn before this court to interpret from Swahili to Sukuma language and vice versa.

In his submission, the appellant adopted the grounds of appeal to form part of his submissions.

Opposing, the learned State Attorney, Wivina Rwebangira on the outset submitted that, if it is established that the plea was unequivocal then that will be the end of the matter as per the requirement of section 360 (1) of **the Criminal Procedure Act**, Cap.20 [R.E 2022] which bars appeals from a conviction based on a plea of guilty.

Similar in the case of **Lawrence Mpinga V R**, 1983 TLR, 168 and in the case of **Mtumwa Silima Bonge V R**, Criminal Appeal No. 11 of 2019 on page. 13.

Submitting on the first ground of appeal, she stated that in the lower court, the appellant pleaded guilty when the charge was read to him that "*Ni kweli niliiba ng'ombe watano wa ndugu Hamadi Nkoroma*".

She further submitted that when the facts were ready, he admitted and signed. Therefore, the plea was unequivocal. Then the prosecution did not go further to proceed. It is trite law indeed the applicable procedure where an accused person pleads guilty to a charged offence as was held in the case of **Joel Mwangambako V The Republic**, Criminal Appeal No.516 of 2017 and also 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. She submitted that the prosecution tendered the exhibit "P1", certificate of seizure and Hati ya Makabidhiano.

As to the second ground of appeal, she submitted that the fact was unequivocal, she firmly submitted that the plea was correct on page 1 of the proceedings. Reinforcing her argument she cited the case of **Mtumwa Silima** (supra) on page 11.

In respect of the third ground of appeal, she submitted that the facts disclosed the essential facts of recent possession and elements thereof on pages 2 and 3 of the proceedings. She averred that since the appellant pleaded guilty to the offence charged there was no need to call the

complainant to testify. She again referred this court to the case of **Joel Mwangambako**(supra).

Besides, she informed this court that the appellant alleges that, he could not understand the language. She stated that it has been a practice of the appellant who comes before the High Court to tell the court that they did not understand the language, however she quickly pointed out that this is an afterthought that should be disregarded by the court. She also referred this court to page 8 in the case of **Joel Mwangambako** in respect of matters that were not discussed in the trial court and have no place in the appeal.

Lastly, She prayed to this court if it thinks fit and in the interest of justice for a retrial as stated in the case stated in **Fatehal Manji**, 1966 [EALR.] 343 and **Peter Kongoli Maliwa and 4 others**, V R, 2020. She prayed this court to dismiss the appeal.

In his brief rejoinder, the appellant reiterated his submission and stated that when he was taken to court he was assaulted by police who forced him to plead. He prayed this court to allow the appeal.

Having heard from both camps, the matter for determination is whether the appeal is meritorious.

As a general rule, a person convicted on his own plea of guilty can only appeal against the extent or legality of the sentence imposed by the subordinate court. Section 360 (1) of **the Criminal Procedure Act**, Cap.20

[R.E 2022] which bars appeals from a conviction based on a plea of guilty. The said 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."

However, the Court of Appeal in several decisions expressed exceptions to that general rule. The courts have provided circumstances under which a person who is convicted upon his own plea of guilty may appeal against his conviction. Some of such cases are **Laurence Mpinga v. Republic** [1983] T.L.R. 166 and **Josephat James v. Republic**, Criminal Appeal No. 316 of 2010, CAT, Arusha Registry (unreported). In the latter case of **Josephat James** (supra) the court stated that under certain circumstances an appeal arising a plea of guilty may be entertained by an appellate court where:

(i)The plea was imperfect, ambiguous, or unfinished and, for that reason, the lower court erred in law in treating it as a plea of guilty;

(ii)An appellant pleaded guilty as a result of a mistake or misapprehension;

(iii)The charge levied against the appellant disclosed no offence known to the law, and

*(iv)Upon the admitted facts, the appellant could not in law have been convicted of the offence charged. (See **Laurence Mpinga v. Republic**, (1983) T.L.R. 166 (HC) cited with approval in **Ramadhani***

Haima's case (Criminal Appeal No. 213 of 2009, CAT, (unreported). In short, the appellate court may entertain an appeal based on a plea of guilty where it may be successfully established that the plea was imperfect, ambiguous, or unfinished and, for that reason, the lower court erred in law in treating it as a plea of guilty."

In this matter at hand, looking at the trial court's record, there is no doubt that when the charge was read over to the appellant by the trial court and upon being required to enter a plea, the appellant understood the language and replied I quote;

"Ni kweli niliiba ngombe watano wa ndugu Hamadi Nkoroma"

The facts constituting the offence were read over to him. The appellant likewise agreed with them to be correct. For that reason, I find the appellant's plea was unequivocal plea of guilty. The charge was clear, pointing out elements of the charge.

The certificate of seizure, caution statement, and Hati ya Makabidhiano were tendered as exhibits.

Accused: No Objection.

Therefore from the analysis, the appellant's grounds of appeal do not prove any of the exceptions stated above. As submitted by the State Attorney, I find that the plea was unequivocal or not ambiguous. It is my considered view that the trial court complied with the procedure provided

and the complaints by the appellant above are baseless. I, therefore, find all the grounds of appeal baseless and dismiss them in their entirety.

In this matter at hand, the respondent prayed to this court to order for retrial in the interest of justice. The Court is aware of an order for retrial, nevertheless the principle in ordering retrial was comprehensively deliberated in the case of **Fatehali Manji V Republic** [1966] EA 343 where the court held that;

"In general a retrial may be ordered only when the original trial was illegal or defective; it will not be ordered where the conviction is set aside because of insufficiency of evidence' or for the purposes of enabling the prosecution to fill gaps in its evidence at the first trial. Each case must depend on its facts and circumstances and an order for retrial should only be made where the interest of justice requires it."

Guided by the above principle, in this case at hand I do not find merit to order for a retrial before a court of competent jurisdiction. In view of the above considerations, I find that the appellant pleaded guilty to the charge of Cattle theft contrary to section 268(1) of the **Penal Code**, Cap. 16 [R.E 2022] with a full understanding of the charge against him. There are no grounds to convince this court that the appellant did not fully understand the nature of the offence when he pleaded guilty to the charge.

It is for the above-stated reasons that I hereby dismiss the appeal in its entirety. The trial court's conviction and sentence are upheld.

Order accordingly.

A. Bahati

A. BAHATI SALEMA

JUDGE

8/9/2023

Court: Judgment delivered in presence of both parties.

A. Bahati

A. BAHATI SALEMA

JUDGE

8/9/2023

Right of appeal explained.

A. Bahati

A. BAHATI SALEMA

JUDGE

8/9/2023

