

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

**(SUMBAWANGA DISTRICT REGISTRY)**

**AT SUMBAWANGA**

**CRIMINAL APPEAL NO. 44 OF 2023**

(Originating from District Court of Nkasi at Namanyere in Criminal Case No. 71 of 2023)

**PAULO S/O RAFAEL ..... 1<sup>ST</sup> APPELLANT**  
**VITUS S/O MWANAWIMA ..... 2<sup>ND</sup> APPELLANT**

**VERSUS**

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

31/10/2023, 5/12/2023

**JUDGMENT**

**MWENEMPAZI, J:**

The appellant was charged in the District Court of Nkasi District at Namanyere for the offence of Armed Robbery contrary to section 287A of the Penal Code, Cap. 16 R.E.2022. It was alleged that the appellants herein named together with another one known as LINUS S/O FABIA@MCHINA@KANG'ANGA jointly and together on the 22<sup>nd</sup> day of February, 2023 at Kitosi Village within Nkasi District in Rukwa Region did steal one motor cycle Reg. No. MC 299 CFT make KINGLION, red in color with chassis No. LTBPK8BGXK2K02642K and Engine No. KL162FMJ19J02642

the property of one EMMANUEL S/O WILBROAD immediately before and after such stealing did use knife to threaten COLNEL S/O MALEMA the driver of the motorcycle in order to obtain or retain the stolen motorcycle.

When the charge was read over and explained to the accused persons, the 1<sup>st</sup> and 2<sup>nd</sup> accused, the appellants herein named, pleaded guilty to the charge. The third accused, the named LINUS S/O FABIA@MCHINA@KANG'ANGA. The trial Magistrate registered a plea of guilty to the charge as far the 1<sup>st</sup> and 2<sup>nd</sup> accused persons (the appellants) are concerned. The 1<sup>st</sup> and 2<sup>nd</sup> accused persons admitted to the facts constituting the offence when the same were read over and explained to them by the prosecution. The appellants were thus convicted witht the offence of Armed Robbery contrary to section 287A of the Penal Code, Cap. 16 R.E.2022 and after sentence hearing they were sentenced to serve thirty years imprisonment without corporal punishment.

The appellants have filed in this court a petition of appeal comprising of four grounds of appeal, namely:

1. That the trial court erred in law and fact to convict and sentence the appellants while the charge against them appellants was not proved beyond reasonable doubt, the standard required by law.
2. That, the trial Court erred in law and fact to convict and sentence the appellants relying on the plea of guilty which was taken after being threatened by the police officers that if we would plead not guilty, we could be killed by them the thing which they fulfilled later to the third accused after he pleaded not guilty.
3. That the trial court did not comply with the statutory provision of law as sanctioned under section 228(2) of the CPA when it recorded not the words of the appellants but its own.
4. That no any material exhibit (was) tendered before the court to prove if the appellants committed the said offence as alleged by the prosecution side.

At the hearing of the appeal the appellants were not represented and the respondent was being served by Mr. Mathias Joseph, learned state attorney. The appellants, both of them, briefly submitted that this court considers the grounds of appeal and allows the appeal.

Mr. Mathias Joseph, learned State Attorney submitted that the appeal originates from Criminal Case No. 71 of 2023. The appellants were charged with offence of armed robbery contrary to section 287A of Penal Code, [Cap 16 R.E 2022]. The appellants pleaded guilty to the charge when the same was read over to them. The respondents are opposing the appeal it is their prayers that the decision of trial Court be upheld.

It is a position of law, section 360(1) of Criminal Procedure Act, [Cap. 20 R.E.2022] prohibits appeal against conviction on plea of guilty save for appeal against sentence.

There are four grounds of appeal, however, none of them is complaining against sentence. However, there are circumstances where the appellant may appeal against plea of guilty. In the case of **Elias s/o Lucas Versus the Republic**, Criminal Appeal No. 358 of 2020, Court of Appeal of Tanzania at Shinyanga (page 8 – 9) it was held that appeal against plea may be entertained by the appellate court in situations:

*"...where the plea was imperfect, as a result of mistake, misapprehension ambiguous or unfinished, the appellant pleaded guilty as a result of a mistake or*

*misapprehension, the charge levelled against the appellant disclosed no offence known too law and upon the admitted facts, the appellant could not in law have been convicted of the offence charged."*

The appellants after charges were read over to them, they pleaded guilty. The accused were three and the third accused did not plead guilty. That means the accused were free agents.

The complaints made are an afterthought. To show that the appellants admitted to the facts (page 4 – 5 of proceedings). The plea had nothing wrong. Where an accused pleads guilty, it relieves the prosecution to call witnesses to prove. That is also was pronounced in the case of **Elias Lucas Versus Republic**, Criminal Appeal No. 358 of 2020 at page 11. It was held that

*"It was noteworthy that the plea in question was made after the charge and particulars were read out in a language that he understood. Thus, the trial court was satisfied that his plea was perfect, unambiguous, and complete admission of guilt to the offence he was charged*

*with. For that reason, there was no need for the trial court to conduct a full trial.”*

The counsel for the respondent submitted insisting that the appeal before this Court has no merit. He made the prayer that the appeal be dismissed and the trial Court decision be upheld.

In rejoinder, the 1<sup>st</sup> appellant, Paulo Rafael submitted by praying that the reason of appeal be received and this Court should not hesitate to release me. He submitted that he did not commit the offence. Also, the 2<sup>nd</sup> appellant, Vitus Mwanawima submitted that his grounds of appeal be received, considered and this Court allow the appeal. He also submitted that he did not commit the offence. He prayed this court to release him.

I have read the proceedings, which I am satisfied that the appellants pleaded guilty to the charge which was read over and explained to them. The plea they made was detailed with further explanation on how they executed the robbery. The response of the appellants was as follows:

*"Accused's plea:*

*1<sup>st</sup> accused*

*It is true I steal(sic) motorcycle from Colnel and we use knife in order to retain the said motorcycle.*

*2<sup>nd</sup> accused*

*Your honour it is true I did steal motorcycle from that person Colnel and I used knife in order to retain the said motorcycle."*

They also admitted to the facts which were read to them by the prosecution. In the cited case of **Elias S/O Lucas vs. The Republic, Criminal Appeal No. 358 of 2020, CAT at Shinyanga**(tanzlii) the Court cited with approval the case of **Sokoine Mtahali@Chimongwa vs. The Republic, Criminal Appeal No. 459 of 2018 (unreported)** where in the court considered the steps which should be followed to assure a plea is unequivocal which steps were enunciated in the case of **Adam vs. Republic [1973] 1 E.A. 445**. It was held as follows:

*"... if the accused then admits all those essential elements, the magistrate should record what the accused has said, as nearly as possible in his own words, and then formally*

*enter a plea of guilty. The magistrate should next ask the prosecutor to state the facts of the alleged offence and, when the statement is complete, should give the accused an opportunity to dispute or explain the facts or to add any relevant facts. If the accused does not deny the alleged facts in any material respect, the magistrate should record a conviction and proceed to hear any further facts relevant to sentence."*

In the present case, the 1<sup>st</sup> and 2<sup>nd</sup> accused person in their knowledge respondent by pleading guilty and they explained. The magistrate recorded what they said even when they admitted to the facts. I find no reason to fault the procedure as complained by the appellants.

Under the circumstances, I find the appeal lacks merit by reason of law as the appellants were convicted on their own plea of guilty. And section 360(1) of the CPA prohibits them to appeal against their conviction save for the sentence. The sentence meted to them is provided by the law as the minimum sentence. Section 287A of the Penal Code, [Cap. 16 R.E.2019]



*A person who steals anything, and at or immediately before or after stealing is armed with any dangerous or offensive weapon or instrument and at or immediately before or after stealing uses or threatens to use violence to any person in order to obtain or retain the stolen property, commits an offence of armed robbery and shall, **on conviction be liable to imprisonment for a term of not less than thirty years with or without corporal punishment.** [Acts Nos. 4 of 2004 Sch.; 3 of 2011 s. 10A]*

The appeal therefore is meritless and is hereby dismissed. The judgement and sentence of the trial court are hereby upheld.

It is ordered accordingly.

Dated and signed at Sumbawanga this 5<sup>th</sup> day of December, 2023

  
**T.M. MWENEMPAZI**

**JUDGE**

Judgment delivered in Judge's chamber this 5<sup>th</sup> day of December, 2023 in the presence of the appellants and Mr. Ladislaus Michael and Ms. Neema Nyagawa, learned State Attorneys.



  
**T.M. MWENEMPAZI**

**JUDGE**

Right of further appeal explained.