

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

**CRIMINAL APPEAL NO. 111 OF 2022**

**MACHIYA NGANGA JIBUNGE @ JULIO.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**[Appeal from the Decision of District Court of Shinyanga at Shinyanga.]**

**(Hon. M.P. MRIO PRM)**

**dated the 11<sup>th</sup> day of May, 2022**

**in**

**Criminal Case No. 67 of 2022**

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**JUDGMENT**

*14<sup>th</sup> September & 28<sup>th</sup> December, 2023.*

**S.M. KULITA, J.**

This is an appeal from the District Court of Shinyanga. The appellant herein above was charged for two counts, namely; **Shop Breaking and Committing an Offence therein**, contrary to section 296 of the Penal Code [Cap 16 RE 2019] and **Stealing**, contrary to section 258 and 265 of the Penal Code [Cap 16 RE 2019].

It was alleged that, on 22<sup>nd</sup> day of January, 2022 at Mjini Kati area within Shinyanga Municipality the appellant broke and entered into the shop of the victim, and while therein stole cash amount of money amounting Tshs. 2,600,000/=and various credit phone voucher valued at Tshs. 156,000/=. All total valued at Tshs 2,756,000/=. The property of one Ismail Amri.

In a nut shell, the victim is a businessman who owns a shop at Mjini Kati in Shinyanga Municipality. That, on the 21<sup>st</sup> day of January, 2022 after he had finished working, the victim left his shop safely closed. When he came back on 22<sup>nd</sup> January, 2022 he realized that, his shop had been broken and some items stolen. With the help of the CCTV Camera that he had installed before, the victim managed to identify the appellant. He also asked his watchman, who in turn told him that, on the preceding night, he saw the appellant entering the toilet, but he had no suspicion on him, as he used to be around the shop. To him, his suspicion went to the appellant. Due to that evidence, the appellant was arrested and arraigned to court for the aforementioned offences.

On the 9<sup>th</sup> day of May, 2022, upon the charge being read over to him the appellant pleaded guilty thereto, hence the Plea of Guilty was entered by the court. That led the trial court to order the State Attorney

to read facts of the case. Upon the accused person (appellant) replying on those fact, the trial court maintained that the Appellant admitted to have committed the offences, hence convicted him and sentenced him to serve the imprisonment terms of 10 (ten) years for the 1<sup>st</sup> count and 3 (three) years for the 2<sup>nd</sup> count.

That decision aggrieved the appellant, hence this appeal with a total number of seven grounds. On the first and second grounds, the appellant faults the trial court for convicting him on a plea of guilty while the ingredients of the charge were not explained to him.

On the hearing date, the appellant appeared unrepresented whereas, the respondent republic had the service of Ms. Caroline Mushi, State Attorney.

Submitting in support of the aforementioned grounds of appeal, the appellant prayed for the court to adopt his grounds of appeal as the submissions for his appeal.

In reply thereof, the State Attorney, Ms. Caroline Mushi stated that, the records show at page 1 of the typed proceedings that, the charge was read over and explained to the appellant who was then asked to plead thereto. With these words, Ms. Mushi formed an opinion that, the

appellant's first and third grounds of appeal lack merits, hence should be dismissed.

These two grounds of appeal led me to earnestly go through the lower court's record and submissions. The record reveals, as alluded earlier, that the appellant was charged to have **broken a shop and steal** cash money amounting Tshs. 2,600,000/= and the mobile phone vouchers valued at Tshs 156,000/=.

When the appellant was asked to plead on the 2<sup>nd</sup> count, his reply as it can be seen in the record was as follows;

*"it is true I stole several vouchers and cash in tune of  
Tshs. 2,756,000/=*"

To me this reply by the appellant shows that, there is a difference between what the appellant was asked from the charge and what he admitted. The charge asked as to whether he stole cash money to the tune of Tshs. 2,600,000/= plus vouchers, but in his plea, the appellant seems to admit stealing cash money amounting Tshs. 2,756,000/= which is not the actual amount of the stolen cash money.

In the case of **Waziri Saidi v. Republic, Criminal Appeal No. 39 of 2017 (unreported)** where the court of appeal quoted the decision

of the erstwhile Court of Appeal of East Africa in **Adan v. Republic [1973] EA 445** which underscored the procedure to be followed when the accused person pleads guilty. It was articulated **at page 446** that;

***"When a person is charged, the charge and the particulars should be read out to him, so far as possible in his own language, but if that is not possible, then in a language which he can speak and understand. The magistrate should then explain to the accused person all the essential ingredients of the offence charged. 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 agree with the statement of facts or asserts additional facts which, if true, might raise a question as to his guilt, the magistrate should record a change of plea to*

*"not guilty" and proceed to hold a trial. 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. The statement of facts and the accused's reply must, of course, be recorded"*

From the record, the appellant whose charge wanted him to reply on whether he had stolen cash money at the tune of Tshs. 2,600,000/= replied on the cash money to the deferent amount of cash money, depict that, the trial court, did not explain the essential elements of the charge to the appellant before recording his plea as required in the above quoted principle of the law.

To me, had the trial Magistrate noted that reply by the appellant was different from what the charge states, she should have entered a plea of "not guilty" and continued to hear the case in proving the charge.

On that account, I am firm that, the trial court wrongly relied on such appellant's reply, hence entered a plea of guilty to the appellant. On that note, I hereby declare all proceedings of the trial court from the alleged appellant's plea to the end a nullity. I thus proceed to quash conviction and set aside the sentence meted.

In upshot, the **appeal is partly allowed**. The original case file should be remitted back to the trial court for re-taking the appellant's plea as per the requirements of the law. In case the appellant refuses to admit the ingredients of the charge, the trial court should enter plea of not guilty and proceed with hearing the case as per **section 228(3) of the Criminal Procedure Act** which states;

*"Where the accused person does not admit the truth of the charge, the court shall proceed to hear the case as hereinafter provided"*

In the event the appellant comes to be convicted again in this case, the trial court should deduct the duration of sentence that the appellant has already served for this case. For the sake of justice, this matter should be entertained by another Magistrate with competent jurisdiction. The appeal is allowed to that extent.

  
**S.M. KULITA**  
**JUDGE**  
**28/12/2023**

**DATED** at **SHINYANGA** this 28<sup>th</sup> day of December, 2023.



A handwritten signature in blue ink, consisting of stylized initials and a surname.

**S.M. KULITA**  
**JUDGE**  
**28/12/2023**