

**THE UNITED REPUBLIC OF TANZANIA  
JUDICIARY  
IN THE HIGH COURT OF TANZANIA  
(MTWARA DISTRICT REGISTRY)  
AT MTWARA  
CRIMINAL APPEAL NO 85 OF 2023**

*(Originating from the District Court of Nanyumbu at Mangaka in Criminal Case No. 172 of 2022)*

**JOSEPH DAUDI CLEMENT .....1<sup>st</sup> APPELLANT  
LAMECK OLIVA CLEMENT.....2<sup>nd</sup> APPELLANT**

***VERSUS***

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

**JUDGMENT**

*10<sup>th</sup> & 27<sup>th</sup> November 2023*

**LALTAIKA, J.**

The appellants herein **JOSEPH DAUDI CLEMENT** and **LAMECK OLIVA CLEMENT**, were arraigned in the District Court of Nanyumbu at Mangaka charged with two counts CONSPIRACY TO COMMIT AN OFFENCE; Contrary to section 384 of the Penal Code [Cap 16 R.E 2022] and Stealing Contrary to Section 258 (1) and 265 of the Penal Code [Cap 16 R.E 2022].

It was alleged that on 30th day of August 2022 at or about 14:55 hrs. at Mnazi Mmoja Street in Michiga village within Nanyumbu District in Mtwara

Region the appellants were found in unlawful possession of one Motorcycle make SANLG Red in color with registration No. MC 697 BMG, Chassis No. LBRSPJB57G9041567 and Engine No. 16957903 valued at Tshs. 1,950,000/= the property of one PIUS S/O OGONO SAMWEL.

When the charge was read over and explained to the appellants, they pleaded guilty. The trial court convicted them as per their own plea of guilty and proceeded to sentence them to 4- and 3-years' imprisonment terms for the first and second counts respectively.

Dissatisfied, the appellants have appealed to this court on four (4) grounds. For reasons that will become obvious soon, I choose not to reproduce them.

It should be noted that when the appeal was called for hearing, the appellants appeared in person, unrepresented. The respondent republic, on the other hand, enjoyed skillful services of Mr. Steven Aron Kondoro, State Attorney.

The appellants indicated that they did not wish to add anything to their elaborate grounds of appeal. However, they reserved their right to a rejoinder in case the need arose.

Taking up the podium, Mr. Kondoro declared outrightly that he supported the appeal. He stated categorically that in his reasoned opinion, although the appellants had allegedly pleaded guilty to the offences, there no indication to prove that the plea was unequivocal. Having gone through the trial court's records, it was unlikely that the prosecution would have been able to prove the case at the required standard namely prove beyond

reasonable doubt had the trial been conducted. He emphasized that given the age of the appellants he could not rule out that the trial court had imposed an unlawful sentence.

It was Mr. Kondoro's submission further that this case bears similarities to another case decided by this court where the identity of the alleged owner of the property one Ogono was difficult to establish. He emphasized that the prosecution had the duty to prove any case beyond reasonable doubt. He pointed out that PW1, PW2, and PW4 were the same persons who were unable to explain how they arrested the appellant in **YAZIDU HAMISI ABDALLAH v. R. CRIMINAL APPEAL NO 71 OF 2023** (Originating from Criminal Case No. 172 of 2022 in the District Court of Nanyumbu at Mangaka)

The appellants on their part, could not be more thankful to the learned State Attorney for endorsing their appeal outrightly. They lamented that they were forced to respond to the affirmative when they were taken to court. Finally, the appellants prayed that this court sets them free so that they could go back to their families.

I have **dispassionately examined the lower court records**. I also looked at the faces of the appellants keenly observing their demeanor as the learned State Attorney was submitting. I should probably provide some contextual clarification here with regards to the "similar" case cited by the learned State Attorney (I will refer it simply as Yazidu's case). Unfortunately, the present matter came to my attention after I delivered judgment in Yazidu or else an order of this court for consolidation would have been warranted. Be it as it may, I fully agree with the learned State Attorney that the matter

at hand bears similarity with that of Yazidu and for consistency, the decision of this court should not be different.

In Yazidu I penned down the following paragraph which I am inclined to reproduce here:

*I must admit that it was somewhat embarrassing to see the appellant entering this court under custody, coming from prison. I am not trained in psychology but the child in him was too obvious. He looked helpless. The prison warden askari guarding him looked relaxed and acted more like a father compared to how he acted when he escorted at least five other appellants to this chamber on the same day before the appellant's turn... I want to use simple and clear expressions to emphasize that this country cares deeply about the rights and welfare of the child. The appellant had intimated that he didn't know how old he was because neither him nor his granny ever been to school. That's fine to me. My only question is how for God's sake did the police officer who arrested Yazidu decide to estimate that he was 19?*

Admittedly, the appellants before me look slightly older than Yazidu. They also do not look as helpless or as terrified as Yazidu was. The *Afande* behind them looks sharper and prepared for unexpected. However, the two as young as they are lamented that they were severely tortured and instructed to say yes as soon as they appeared in court.

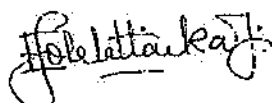
I won't repeat the lamentation in Yazidu. Nevertheless, I cannot resist the temptation to state that the learned trial magistrate should have warned himself before accepting a plea of guilty from such young offenders. In **MICHAEL ADRIAN CHAKI V. REPUBLIC** CRIMINAL APPEAL, NO 399 OF 2019 at page 7, the CAT stated:

*"There cannot be unequivocal plea on which a valid conviction may be founded unless these conditions are conjunctively met. 1. The appellant must be aligned on a proper charge. That is to say, the offence, section and particular thereof must be properly framed and must explicitly disclose the offence known to the law. 2. The Court must satisfy itself without any doubt and must clear 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 plea 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 term of section 228(1) of the Criminal Procedure Act (supra). 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 plea 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."*

I would take the second condition above most seriously in the situation like the present where young men barely above the age of minority appear in court under custody, full of fear. A plea of guilty should not be taken as a shortcut to avoid prosecution due to lack of sufficient evidence, real or perceived.

Premised on the above, I allow the appeal. I hereby quash conviction, set aside the sentence and order that the appellants be released from jail forthwith unless they are being held for any other lawful purpose.

It is so ordered.



**E.I. LALTAIKA**  
**JUDGE**  
**27.11.2023**

**Court**

Judgement delivered under my hand and the seal of this court this 27<sup>th</sup> day of November 2023 in the presence of Mr. Melchior Hurubano, learned State Attorney for the respondent and the appellants who have appeared in person, unrepresented.

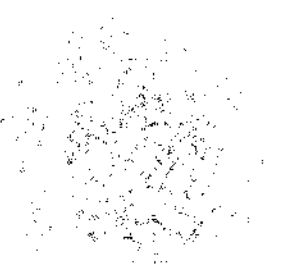


*E.I. Laltaika*

**E.I. LALTAIKA  
JUDGE  
27.11.2023**

**Court**

The right to appeal to the Court of Appeal of Tanzania is fully explained.



*E.I. Laltaika*

**E.I. LALTAIKA  
JUDGE  
27.11.2023**