

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(SONGEA DISTRICT REGISTRY)

AT SONGEA

DC. CRIMINAL APPEAL NO 41 OF 2022

(Originating from Tunduru District Court in Criminal Case No. 159 of 2021)

MASANJA KAZONDE PATRICK APPELLANT

VERSUS

THE REPUBLIC RESPONDENT

JUDGMENT

Date of last Order: 31/01/2023

Date of Judgment: 07/02/2023

U. E. Madeha, J.

At Tunduru District Court in Ruvuma region, the above-named Appellant was charged with the offence of cattle theft contrary to section 268 (1) and (3) of the *Penal Code*, (Cap. 16, R.E 2019). Briefly, the allegations against the Appellant are that, on 26th November, 2021 at Ngapa Village within Tunduru District in Ruvuma Region the Appellant did steal one (01) cow worth Tanzanian shilling two hundred and fifty thousand (250,000/=) the property of none other than Juma Kitoti.

As a matter of fact, the Appellant was brought before the District Court of Tunduru whereby he pleaded guilty to the charge of cattle theft contrary to section 268 (1) and (3) of the *Penal Code* (supra). The Appellant was convicted for the offence he was charged and sentenced to serve five (5) years imprisonment.

The Appellant was aggrieved by the conviction and sentence of the Trial Court and he had come to this Court on appeal. In his petition of appeal, the Appellant has raised two (02) grounds of complaints as follows:

- 1. The Trial Magistrate erred in law and facts by convicting him relying on the Court proceedings that was hurried, because soon as the charge was read to the accused person, the Trial Court quickly proceeded with the facts of the case without even giving him a chance to digest the facts read over to him so as to be aware. Strange as it may appear, the Trial Court still convicted him without knowing what the Appellant intended to admit or to deny something which is not fair in the eyes of the law.*
- 2. The Trial Court erred in law to convict the Appellant by relying on the collectively admitted exhibits P1, P2 and P3 without considering that there were no original exhibits.*

At the hearing of this appeal the Appellant appeared in person while Mr. Frank Chonja and Tumpale Laurence joined forces to represent the Republic/Respondent.

The Appellant in his submission has nothing to state than praying that his grounds of appeal be adapted to form part of his submission because it was his first time to be charged and convicted of a criminal offence.

On the other hand, Mr. Frank Chonja the learned State Attorney for the Republic did not support the appeal. He submitted that, the Appellant, in his first (1st) ground of appeal is claiming that he was not given time to reply to the facts one by one as a result he was convicted and sentenced. The State's Attorney for the Respondent added that the accused person pleaded guilty to the charge as a result of his plea, which was unequivocal.

In that regard, he further stated that the proceedings of the Trial Court show that the charge sheet was read to the Appellant in a language that the Appellant understands and comprehends which is none other than Kiswahili. In fact, the Appellant had given answers in the same language which is Kiswahili. In addition, he replied that it was true that he stole one

(01) cow so that he could sell it and get fare for him to go to Sumbawanga where his grandmother had died. On the same note, he argued that the Appellant made his plea by using Kiswahili language, as shown in the Court proceedings. He contended that the facts of the case were read and the accused admitted that it was true that the incident happened on the day in question and he took one (01) cow and sold it. Moreover, he further averred that after the prosecution had tendered the exhibit, which is the certificate of seizure, the Appellant's cautioned statement, and one (01) picture of the cow the Appellant has no objection and they were admitted. Additionally, he argued that the Appellant's cautioned statement was admitted as exhibit P1, the certificate of seizure was admitted as exhibit P2, and three photographs (pictures) as exhibit P3. He further submitted that after admitting the exhibits and the facts given by the prosecution side, the Court convicted the Appellant according to the law. To add to it, he further argued that the Appellant was convicted on his unequivocal plea of guilty and he was not required to appeal. To crown it all, he cited with approval section 360 (1) of the *Criminal Procedure Act* (Cap. 20, Revised Edition 2022), which provides that there is no appeal on conviction where there was a plea of guilty but the accused may appeal on the sentence. He

added that the sentence given was a lesser sentence compared to the sentence given under the law. For more emphasize he cited with approval the case of **Laurent Kapinga v. R** (1983) TLR 166 and **Kalos Punda v. Republic**, Criminal Appeal No. 153 of 2005 (unreported - Court of Appeal of Tanzania at Mtwara), in which the Court considered the appeal on the plea of guilty and observed that:-

"The appellant's plea being unequivocal, they were correctly convicted on their own plea of guilty. It would follow that no appeal would lie on a plea of guilty....."

"In this case, the appellant's having been convicted on their unequivocal plea of guilty cannot now be heard to complain about the conviction." They cited with approval the case of **Laurent Kapinga v. Republic** (1983) TLR 166 whereby they referred to the provision of section 360 (1) of the Criminal Procedure Act (Supra), which states *inter alia*-

"No appeal shall be allowed in the case of any accused person pleaded guilty and has been convicted on such plea"

by a subordinate Court except as to the extent or legality of the sentence.'

Basically, the State's Attorney argued further that the second (2nd) ground of the appeal is similar to the first (1st) ground because it relates to the issue of exhibits tendered before the Trial Court whereby the Appellant did not object to the tendering of such exhibits. In that regard, he submitted that the exhibits were correctly admitted and this appeal has no merit and must be dismissed.

As much as I am concerned, I have carefully considered the two (02) grounds of appeal and found that the issue is whether the plea of guilty entered by the Appellant was not in accordance with the law.

After going through the case's record, I have seen that the facts of the case were not very long. In fact, the facts were read by the prosecution side and replied to by the Appellant in a language that he understood and comprehend that is none other than Kiswahili.

As a matter of fact, the Appellant admitted that he had stolen a cow belonging to his employer whereby he sold and used the money he got as fare to travel to Sumbawanga. In that regard, after hearing this appeal, the

Appellant told this Court that he had already been paid his wages for two years and had already used them all.

Notably, the issue is whether the conviction entered by the Trial Court on the Appellant's plea of guilty was legally correct according to the legal procedures. This Court is of the view that the plea of guilty entered by the Appellant was in accordance with the law. This is because the charge sheet and the language used in court were Kiswahili, the Appellant admitted all the facts of the case read by the prosecution without lawful qualification. It is true that, the admitted facts by the Appellant do constitute the offence the Appellant was charged with, which was the offence of cattle theft contrary to section 268 (1) and (3) of the *Penal Code* (Cap. 16, R.E. 2019).

For more emphasis reference is made to the case of **Jonas Samweli @ Kanaka and Charles Bakari in Criminal Appeal No. 58 of 2005**, in which the accused pleaded guilty to a charge of robbery with violence, but later claimed that his plea was unequivocal. In that case the Court held that:

"On the basis of the record, we entertain no doubt in our mind, that the Learned Judge correctly dismissed the

appeal. The appellant's plea being unequivocal, they were correctly convicted on their own plea of guilty. It would follow that no appeal would lie on the plea of guilty".

Since the Appellant was convicted on his plea of guilty; and his plea was unequivocal, he was not supposed to appeal in relation to his conviction unless on the following matters, on which the Court of Appeal of Tanzania has provided guidance in the case of **Laurence Mpinga v. Republic** (1983) TLR 166, that:

"An accused person who had been convicted by any court of an offence on his own plea of guilty, may appeal against the conviction to a higher court on the following grounds:

- 1. That, 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;*
- 2. That, he pleaded guilty as a result of a mistake or misapprehension;*
- 3. That, the charge laid at his door disclosed an offence not known to law; and*
- 4. That, upon the admitted facts, he could not in law have been convicted of the offence charged."*

To put it in a nutshell, the Appellant was convicted on his own plea of guilty. According to section 360(1) of the *Criminal Procedure Act*, (Cap. 20, R.E 2022) he was not required to appeal except for the sentence. The Appellant was sentenced to serve a term of five (05) years in prison. It is important to note that the Appellant was sentenced under the *Minimum Sentencing Act*, (R.E. 2019).

As a matter of fact, after going through the Tanzania Sentencing Manual, which provides guidance on sentences of criminal offences, I have found that; the offence of cattle theft contrary to section 268 (1) and (3) of the *Penal Code* (Cap. 16, R.E 2019) its sentence is fifteen (15) years. The Appellant was sentenced to serve five years imprisonment which is a lesser sentence compared to the provided sentence. Therefore, the Appellant was sentenced to a lesser punishment.

Therefore, in the end for the reason stated above this appeal has no merit and is hereby dismissed and I uphold the conviction and sentence of the Trial Court. Order accordingly.

DATED and DELIVERED at **SONGEA** this 7th day of February 2023.



A handwritten signature in black ink, appearing to read "U. E. Madeha", written over a horizontal line.

U. E. MADEHA

JUDGE

07/02/2023

COURT: This judgment is read before the Appellant and Mr. Frank Chonja for the Republic and the right of appeal is explained to both parties.



A handwritten signature in black ink, appearing to read "U. E. Madeha", written over a horizontal line.

U. E. MADEHA

JUDGE

07/02/2023