

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(SONGEA DISTRICT REGISTRY)

AT SONGEA

DC. CRIMINAL APPEAL NO. 39 OF 2022

(Originating from Tunduru District Court in Criminal Case No. 63 of 2022)

THABIT SAID JUMA APPELLANT

VERSUS

THE REPUBLIC RESPONDENT

JUDGMENT

Date of last Order: 26/01/2023

Date of Judgment: 02/02/2023

U. E. Madeha, J.

It is worth considering that, the Appellant that is none other than Thabit Said Juma, before Tunduru District Court in Ruvuma Region he was confronted with two counts. The first count was house breaking contrary to section 294 (1) (a) and (b) of the *Penal Code* (Cap. 16, Revised Edition, 2019) and the second count was theft contrary to section 265 of the *Penal Code* (supra).

On his own plea of guilty the Court found him guilty for both counts and he was convicted accordingly. For the first (1st) count he was

sentenced to five (05) years in prison while for the second (2nd) count he was sentenced to four (04) years imprisonment. The sentences were ordered to run concurrently. The sentence and conviction did not amuse him. He lodged this appeal and in his petition of appeal he has five (05) grounds which can be consolidated into two (02) grounds as follows:

- 1. That, the Trial Magistrate erred in law and facts to convict the Appellant while the burden of the Court was to examine whether the Appellant's plea of guilty was proper.*
- 2. That, the Trial Magistrate erred in law and facts to convict the Appellant basing on the exhibits that were admitted by the Court without looking on his Guinness as the prosecution side failed to tender the certificate of seizure of those exhibits.*

At the hearing of this appeal the Appellant appeared in person that is to say he was unrepresented, whereas Mr. Kihaka the learned Senior State's Attorney represented the Republic/Respondent.

Defending himself the Appellant faulted the decisions of the Trial Court. In fact, the Appellant was complaining that the Court had not heard the witnesses to ensure his case met the required standards of proving this

case beyond reasonable doubt. He also rejected the evidence in the caution statement.

It is worth considering that, Mr. Kihaka the learned Senior State Attorney for the Republic submitted that, the Appellant was taken to the Court on 14th April, 2022. As a matter of fact, he was charged with two counts. The first (1st) count was housebreaking contrary to section 294 (1) (a) and (b) of the *Penal Code* (supra) and the second (2nd) count was theft contrary to section 265 of the *Penal Code* (supra). It is true that, before the Trial Court the Appellant was arraigned together with Bakari Ally Mpinga who was his co-accused. The charge was read to the accused in Swahili language which is understood to him. He added that, actually the Appellant who was the first accused person pleaded guilty to both counts and admitted the facts of the offences as presented by the prosecution side. The second (2nd) accused person pleaded not guilty to both counts.

He further averred that, based on the Appellant's plea of guilty and admission to the facts of the offences, the Trial Court convicted the Appellant, and for the first (1st) count he was sentenced to serve a term of four (04) years imprisonment and for the second (2nd) count the Appellant

was sentenced to serve five (05) years imprisonment. The sentences were ordered to run concurrently.

To crown it all, the learned Senior State Attorney continued to cite section 360 (1) of the *Criminal Procedure Act*, which prohibits appeals whereby the accused pleaded guilty. He also cited with approval the case of **Laurence Mpinga v. Republic** (1983) TLR 166; which provides some circumstances in which the accused person may appeal where he pleaded guilty. He argued that due to the circumstances of this case, he considered that the plea of guilty was unequivocal. To add to it, he also cited the case of **Christian Joseph Muanda v. The Republic, (Supra)**, and submitted further that, the Appellant's statement was sufficient to know that he committed the offence of house breaking under section 294 (1) (a) and (b) and theft contrary to section 265 of the *Penal Code* (Cap. 16, R.E. 2029).

Additionally, with regard to the second (2nd) ground of appeal the Senior State Attorney submitted that the prosecution was not required to prove its case beyond reasonable doubt by calling witnesses since the Appellant pleaded guilty and he admitted all facts of the offences he was charged with and the Court records are very clear on that. As a matter of

fact, the Senior State Attorney referred to section 228 (2) of the *Criminal Procedure Act* (supra) which states inter alia that:

"(2) Where the accused person admits the truth of the charge, his admission shall be recorded as nearly as possible in the words he uses and the magistrate shall convict him and pass sentence upon or make an order against him, unless there appears to be sufficient cause to the contrary. "

The State Attorney prayed for this appeal to be dismissed and he cited also the case of **Christian Joseph Muanda v. The Republic**, Criminal Appeal No. 510 of 2020, which states that:

"Words which the appellant stated during his plea of guilty were sufficient to show that he admitted facts narrated by the prosecution as being true and correct"

In that regard, he added that since the Appellant pleaded guilty the prosecution was not supposed to prove the case beyond a reasonable doubt by calling witnesses. The Senior State Attorney further averred that the prosecution presented exhibits and the Appellant has no objection and

they were admitted as exhibits P1, P2, and P3. Basically, he averred that the Appellant's appeal has to be disregarded since the sentence he was convicted of was proper because the maximum sentence for housebreaking is fourteen (14) years, and for stealing is seven (07) years. Notably, the Appellant was imprisoned for four (04) years for the offence of house breaking, and five (05) years imprisonment for the offence of theft. Therefore, he argued that the Appellant's convictions and sentences were proper. On the same note, he prayed for this appeal to be dismissed.

After the submissions of the Senior State's Attorney for the Republic, the Appellant in his rejoinder submission asked this Court to look at him because he had not entered a plea of guilty.

In view of the grounds of appeal raised by the Appellant and the submissions made by both parties, the issue is whether the prosecution side needs to prove its case beyond a reasonable doubt where the accused has pleaded guilty. In that regard, I will determine the merits of this appeal by discussing all the grounds of the appeal together.

As much as I am concerned, I have passed through the Trial Court's records and discovered that the Appellant was the first (1st) accused. In

fact, he was charged with his co-accused. They were charged with two counts of housebreaking contrary to section 294 (1) (a) and (b) of the *Penal Code* (supra) and theft contrary to section 265 of the *Penal Code* (supra). The Appellant pleaded guilty and he was convicted and sentenced to serve four and five years in prison respectively and the sentence was ordered to run concurrently.

It is worth considering that, the Appellant has appealed on the ground that the conviction was not proper since the prosecution side failed to prove its case beyond a reasonable doubt.

Notably, I have carefully passed through the Trial Court's proceedings and find that the Appellant pleaded guilty. As a matter of fact, the prosecution is not required to prove the case beyond a reasonable doubt by calling witnesses where the accused has pleaded guilty. Principally, in criminal cases, the prosecution side is required to prove the charge beyond a reasonable doubt if the accused denies material facts during the preliminary hearing. In that case, thereafter the prosecution must call witnesses to prove their case beyond reasonable doubt. What is needed in this case is to determine whether the plea of guilty entered by the Appellant was in accordance with the law.

The Appellant pleaded guilty on both counts; the prosecution side tendered the exhibits that were received and admitted as exhibits P1, P2, and P3, and the accused had no objection, and he admitted all the facts as presented by the prosecution side; as a result, he was convicted accordingly. Looking at the plea made by the Appellant, I find that it was without any lawful qualification and constituted the offence charged. Therefore, I support the submissions of the Senior State's Attorney on the issue of proving the case beyond a reasonable doubt, and I find the plea of guilty to be unequivocal and must not be disturbed. To put more emphasis, reference is made to the case of **Jonas Samweli @ Kanaka and Charles Bakari v. The Republic**, Criminal Appeal No. 58 of 2005, in which the accused pleaded guilty to a charge of robbery with violence, but later he 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".

To crown it all, the Appellant has appealed before this Court claiming that the prosecution failed to prove its case beyond a reasonable doubt. Basically, the Appellant was not supposed to appeal in relation to this issue since he pleaded guilty and according to section 228 (2) of the *Criminal Procedure Act* (supra), there was no need for the prosecution to call witnesses to prove the case.

Actually, the second (2nd) issue was on tendering exhibits. The Appellant claimed that there were no exhibits tendered before the Trial Court. Having gone through the proceedings of the Trial Court I have found that the exhibits were tendered and admitted and the Appellant had no objection to them, the subwoofer, certificate of seizure, and the Appellant's cautioned statement were admitted as exhibits P1, P2 and P3 respectively.

To put it in a nutshell, since the Appellant pleaded guilty to the offences he was charged with, he was required to appeal in the following matters, on which the Court of Appeal of Tanzania has previously provided guidance in the case of **Laurence Mpinga v. Republic** (1983) TLR 166 Samatta, J., who held 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 in 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."*

In this appeal the Appellant was convicted on his own plea of guilty. I have gone through the proceedings of the Trial Court and find that the plea was unequivocal. I hereby uphold the decision of the Trial Court in which the Appellant was convicted for both counts as he was charged, for the first count of House Breaking contrary to section 294 (1) (a) and (b) of the *Penal Code* (supra) he was sentenced and convicted to serve four years imprisonment and for the second count of theft contrary to section 265 of the *Penal Code* (supra) he was sentenced and convicted to serve five years imprisonment. The sentences were ordered to run concurrently.

Consequently, for the reasons stated above, this appeal has no merit and it is hereby dismissed. Order accordingly.

DATED and DELIVERED at **SONGEA** this 2nd day of February, 2023.




U. E. MADEHA

JUDGE

02/02/2023

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




U. E. MADEHA

JUDGE

02/02/2023