IN THE HIGH COURT OF TANZANIA

(SUMBAWANGA DISTRICT REGISTRY)

AT SUMBAWANGA

CRIMINAL APPEAL NO. 46 OF 2023

(Originated from Criminal Case No. 98 of 2022 in District Court of Kalambo at Kalambo)

AISON JOSEPH @ CHISOTE .....APPELLANT

VERSUS

THE REPUBLIC .....RESPONDENT

JUDGMENT

30th April, 2024 & 22nd May, 2024

MRISHA, J.

The appellant, **Aison Joseph @ Chisote** was charged before the District Court of Kalambo at Kalambo (the trial court) with one count of stealing animals contrary to section 258(1) and 268 (1) and (3) of the Penal Code [Cap 16 R.E. 2019] henceforth the Penal Code. He was convicted on his own plea of guilty to the charge having admitted to the correctness of the facts constituting the charged offence which were narrated to him by the public prosecutor.

Subsequently, he was sentenced to serve a jail term of five years. The appellant was aggrieved by both conviction and sentence imposed upon

him. Hence, he appealed to this court. His petition of appeal is preferred with seven grounds of grievance which can be paraphrased as follows: -

1. *That, the appellant did not commit the serious offence as claimed by the prosecution side.*
2. *That, the trial court totally erred in law point and fact by convicting the appellant relying on plea of guilty of the appellant while the appellant was denied an opportunity to say, dispute or add anything relevant to facts something which made the whole process to be nullity. Reference is made to the case of* ***Adan v/s Rep*** *(1973) 1 EA at page 446.*
3. *That, the trial court was totally wrongly in law point and fact by convicting and sentencing the appellant relying on the plea of guilty of the appellant while at the time of reading the charge to the appellant, he did not understand immediately the language used by the court.*
4. *That, the trial court erred in law point and fact to convict and sentence the appellant based on the plea of guilty of the appellant by not taking into consideration that it was his first time to stand before the court.*

5. *That, the trial court erred in law point and fact to convict and sentence the appellant without taking into account that before convicting on a plea of guilty every ingredient of the offence must be explained to the accused and the accused must be asked to plead thereto, otherwise, the conviction would be faulted. Reference is made to the cases of* ***Hando S/o Akunay vs Republic*** *(1951) 18 EACA 307 and* ***Chacha Wambura vs Republic*** *(1953) 20 EACA,* ***John S/o Faya vs Republic****, Criminal Appeal NO. 133 OF 2010 (all unreported).*
6. *That, the plea of guilty was improperly taken and became equivocal whereas the amount and special marks were not disclosed to the appellant something which rendered the purported findings and imposed sentence to be null.*

At the hearing of this appeal, the appellant appeared in person, unrepresented, whereas the respondent Republic had the services of Mr. Frank Migune, learned State Attorney.

Before starting to make his submission before the court, the appellant adopted all his grounds of appeal in order to form part of his submission in

chief and prayed that this court be pleased to consider his grounds of appeal, allow appeal and set him free.

On the other side, the respondent's counsel started his submission by opposing the instant appeal contending that no appeal will be heard where the appellant has been convicted and sentenced on his own plea of guilty, except as to the extent or legality of the sentence. To support his stance, Mr. Migune referred the court to the provisions of section 360(1) of the Criminal Procedure Act (the CPA) which stipulates as follows: -

> *"No appeal shall be allowed in the case of any accused person who has pleaded guilty and has been convicted on such plea by a subordinate court except as to the extent or legality of the sentence."*

In the circumstance, the learned State Attorney argued that the appellate court can entertain the appeal where the plea is imperfect, ambiguous or unfinished, where it appears that the appellant pleaded guilty as a result of a mistake or misapprehension, or where the charge leveled against the appellant does not disclose offence known to law, and that upon the admitted facts, the appellant could not in law have been convicted of the offence charged.

To bolster his proposition, the learned State Attorney cited the case of **Elias Lucas vs Republic,** Criminal Appeal No. 358 of 2020 (unreported) at page 8 & 9.

In supporting the appellant's conviction, the learned State Attorney referred the court to page 1 of the trial court typed proceedings and submitted that the said proceedings clearly reveal that charge was read over to the appellant and the appellant took a plea by admitting that, *"Ni kweli niliiba ng'ombe wa baba yangu aitwae Joseph Chisote"*; in a simple language, the appellant's plea can be translated in English to mean that, *"It is true I stole a cow of my father one Joseph Chisote".*

The learned counsel added that the appellant clearly pleaded guilty to the offence charged and his plea does not show that the appellant took his plea mistakenly or by misapprehension.

Mr. Migune further argued that the appellant was charged with the offence of stealing animals contrary to section 258(1) and 268(1) & (3) of the Penal Code; that the offence and the charging section were clearly shown in the charge sheet. Hence, it was his submission that the appellant's plea reflects the offence he was charged with.

Arguing on the point that the appeal can be entertained if and upon the admitted facts, the appellant could not in law have been convicted of the offence charged. The learned State Attorney argued that facts were read over to the appellant, disclosed the date and time where the incident took place, and value (wealth) of the property stolen. Hence, it was his argument that the facts read over and explained to the appellant, disclosed the offence with which the appellant stood charged before the trial court.

He further referred the court to pages 2, 3 and 4 of the trial court typed proceedings where it shows that facts were read over and explained to the appellant, then appellant was given a right to admit or deny some of the narrated facts.

Conversely, the counsel argued, the appellant admitted to all facts read over and narrated to him by the public prosecutor. Finally, Mr. Migune argued that the present appeal does not comply with the principle stated in the case of **Elias Lucas** (supra).

In relation to the ground that the appellant did not understand the language used by the court, the learned State Attorney maintained his stance by submitting that the appellant pleaded guilty to the charged

offence by using his mother tongue language which proves that the appellant understood what he replied to.

In rejoinder, the appellant had nothing to add because he is a lay man.

In dealing with the appeal which lies where the accused person is convicted on his own plea of guilty, the law under section 360(1) of the CPC regulates the appeals of the same nature. This court's position is fortified with the submission of the learned State Attorney that for the appellate court to entertain appeals of such nature, the appellant must prove to the court that the exceptional circumstances as the ones prescribed in the case of **Elias Lucas vs Republic** (supra) do exist. See also the case of **Laurence Mpinga v Republic** [1983] TLR 166.

In view of the mentioned above position of the law as well as the rival submissions of parties herein, the issue for my determination is whether the appellant was convicted on an unequivocal plea.

In order to properly determine the above issue, it is essential to reproduce the appellant's plea of guilty as recorded by the trial magistrate on 18th August, 2022. It reads, thus:

> "***Coram:*** *Hon. N.K. Temu –RM*

***PP**: Insp Mrisho*

***Accused:** Present*

***C/C:** Adelaida Bonifasi*

Charge read over and fully explained to the accused person who is asked (sic) plead thereto.

***Accused:** Ni kweli niliiba ng'ombe wa baba yangu aitwae Joseph Chisote.*

***Court:** Entered as a plea of guilty.*

Sgd: N.K. Temu- RM

18.08.2022..."

The above excerpt clearly depicts that the charge at hand, the, particulars of the offence as well as facts of the charged offence as given by the prosecution, disclosed the ingredients of the charged offence to wit: Stealing Animals contrary to section 258 (1) and 268 (1) and (3) of the Penal Code; as such; the appellant understood the nature of the offence charged and the narrated facts which constitute the abovenamed criminal offence.

To assure itself that the accused's plea is unequivocal, the trial court must consider the steps which the appellate court should consider, and those steps were mentioned in the case of **Adan v Republic** (supra) cited by

the appellant in ground two of his petition of appeal, where the Court held inter alia, that:

> *"... 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..."*

On my part, I wish to say that the above principle applies mutatis mundatis to the instant case where it appears plainly that the appellant admitted all essential elements constituting the charged offence when the charge was read over and explained to him by the public prosecutor and the trial court satisfied that his plea was perfect, unambiguous and complete admission of the offence charged.

Nevertheless, the typed records of the trial court reveals that the facts which were narrated by the public prosecutor, were admitted by the appellant without any addition or dispute against them, as it is shown at page 4 of those records. Consequently, the appellant was convicted on his own plea.

In the case of **Juma Tumbilija & 2 Others vs Republic** [1998] TLR 139, it was inter alia, held that:

> *"According to section 360 of the Criminal Procedure Act 1985 an appeal against conviction upon a plea of guilty can only be competent after determining that plea of guilty was not unequivocal."*

Given the circumstances of the case at hand, there is no doubt that the appellant was convicted on his own unequivocal plea of guilty. In this regard, as correctly submitted by the learned State Attorney, in terms of section 360(1) of the CPA, the appellant was barred to appeal against conviction which resulted from his own plea of guilty, except on the severity of the sentence which is not in dispute between the parties.

I may also add that the appellant just indicated in his petition of appeal that he has appealed against both conviction and sentence, but all the

grounds of appeal adopted by him in order to form part of his submission in chief, do not show that he complained that the sentence of five (5) years imprisonment imposed upon him by the trial magistrate, was excessive or severe, so to say. This makes the court to find no merit in that complaint.

This takes me to the appellant's other complaint that he did not understand the language used by the court. This point will not detain me much because in my view, the appellant's plea is unequivocal, as I have already mentioned and reasoned above.

Nonetheless, when the charge sheet was read over and clearly explained to him, the appellant made his plea in Swahili language by saying that:

"Ni kweli niliiba ng'ombe wa baba yangu aitwae Joseph s/o Chisote"

This shows that the appellant clearly understood the offence charged after the same had been read over and explained to him. His argument that he did not understand the language of the court when the charge was read over and explained to him, is an afterthought.

By the way, the appellant had a chance to dispute, explain the facts or add any relevant facts after the public prosecutor had stated the facts of the alleged offence, but he did not use that chance to raise any dispute.

Further, the appellant did not object or dispute the prayer of the public prosecutor that his cautioned statement be admitted as an exhibit; this is shown at page 3 of the trial court typed proceedings where upon being asked whether he had any objection regarding that statement, the appellant responded thus:

> *"**Accused**: Your honour, I have no any objection on production of Caution statement as an exhibit..."*

Since, the appellant had chances of raising that concern when the charge was read over and explained to him, or at the time the facts were stated, narrated to him and he was given a chance of disputing or objecting them, but never exercised that right, I find that this point does not hold water and the grounds of appeal raised by him have no merits.

In the premise, I am now in a good position to answer the above main issue negatively that the present appeal has no merits.

The above being said and done, I dismiss the present appeal, uphold the conviction meted out to the said appellant and sustain the sentence passed against him by the trial court.

It is so ordered.

A.A. MRISHA
JUDGE
22.05.2024

DATED at **SUMBAWANGA** on this 22nd day of May, 2024.

A.A. MRISHA
JUDGE
22.05.2024