IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(SONGEA SUB- REGISTRY)

AT SONGEA

CRIMINAL APPEAL NO. 53 OF 2020

(Originating from Criminal Case No. 54 of 2023 in the District Court of Nyasa at Nyasa)

ALPHONCE ALTO HAULE..... APPELLANT

VERSUS

THE REPUBLIC ..... RESPONDENT

JUDGMENT

Dated: 19th & 22nd January, 2024

KARAYEMAHA, J.

On a plea of guilty, District Court of Nyasa (hereinafter the trial court) in Criminal Case No. 54 of 2023 convicted the appellant of armed robbery, contrary to **section 287A** of the Penal Code, Cap.16 R.E. 2019. Consequent thereto, he was sentenced to a custodial sentence of thirty years.

The allegation, as gathered from the trial court's record, is that on 24th July, 2023 at Hongi area within Nyasa District in Ruvuma Region the appellant threatened to use violence and stole two cell phones make

NOKIA with IMEI Nos. 356613721374338 and 356613723374336 and ITEL with IMEI Nos. 350595658755959 and 350595658755942 both valued at Tshs. 52,000/= the property of Magdalena Julius Mwambojoke. It was charged further that immediately before stealing he threatened to use violence.

Facts of the case were adduced by the Public Prosecutor (hereinafter the PP). Satisfied that the charge was proved, the trial court convicted the appellant and as introduced above he was consequently sentences to 30 years imprisonment.

To better understand what transpired in the at the trial court, I find it apposite to navigate through the record. On 1st August, 2023 the appellant was arraigned in the trial court to answer two counts of armed robbery c/s 287A and grievous harm c/s 225 both of the Penal Code Cap 16 R.E. 2022. When the charge was read over to him, the appellant pleaded guilty to the offence of armed robbery but denied causing grievous harm to Magdalena Julius Mwambojoke (hereinafter the victim). When the Public prosecutor narrated the facts constituting the offence, the appellant had this to say, I quote for readymade reference:

> *"Accused: That, some facts of the case on the summary are not correct."*

Following that event, the case was adjourned till 24th August, 2023 for preliminary hearing again. Although I have not grasped why, but it appears that preliminary hearing was not conducted. On 30th August, 2023 when the case was called on perhaps for preliminary hearing, the PP prayed and was granted to amend the charge under section 234(1) of the Criminal Procedure Act, [Cap. 20 RE 2022] (hereinafter the CPA). The reason was to omit the 2nd count and facts relating to use of knife in committing the offences. After the prayer was granted, the amended charge was read over to the accused person. This is vivid at page 9 of the trial court's typed proceedings. This time around the appellant was accused of stealing the victim's mobile phones make NOKIA with IMEI Nos. 356613721374338 and 356613723374336 and ITEL with IMEI Nos. 350595658755959 and 350595658755942 both valued at Tshs. 52,000/= the property of Magdalena Julius Mwambojoke. It was charged further that immediately before stealing he threatened to use violence. The appellant pleaded guilty.

Thereafter the PP prayed to remind the appellant facts narrated on the 1st August, 2023 on the promise that he would to omit the weapon used, i.e., the knife. New facts were adopted by the trial court. It is reflected at page 11 that the facts were read over and properly

explained in Kiswahili language to the appellant. on being asked whether he admitted them, the appellant responded that the facts of the case delivered by the prosecution were correct summary of what happened.

Following the appellant's plea and admission of all facts, the trial court proceeded to convict him. Again, upon considering the aggravating factors and the appellant's mitigation, the trial court inflicted a statutory sentence of 30 years imprisonment. Conviction and sentence caused unhappiness on the appellant who boldly ascended a ladder to this court. His petition of appeal contains four (4) grounds of appeal which are reproduced with grammatical challenges as follows:

1. *That the plea which was entered by the appellant is equivocal plea which is bad in law and the procedure for plea of guilty was not well followed by the trial court magistrate according to the law.*
2. *That the trial magistrate erred in law and fact to hold the conviction of the appellant without to satisfy himself that without doubt and clear his mind the appellant fully comprehends what is actually faced in the charge therefore it resulted to injustice.*
3. *That the trial court erred in law and fact by convicting the appellant without recording exactly the words used by the appellant in proceeding and the procedure of a plea of guilty was not well complied by the trial magistrate.*

4. *That the appellant did not plead guilty to every ingredients of the offence in the charge as required by the law.*

When the appeal was called on for hearing on 19th January, 2024, the appellant appeared in person, unrepresented while Mr. Gaston Mapunda, the learned State Attorney represented the respondent Republic.

In a bid to exercise his rights, the appellant opted to let the State Attorney submit first and would strike last if need arose.

Mr. Mapunda commenced his address by expressing his firm position that the respondent was opposing the appeal. He then considered the four grounds and after examining them he came up with two grounds which are:

1. *The trial court erred in law and in fact by failing to adhere to the procedure of taking the plea of guilty.*
2. *The appellant did not plea to every ingredient of the offence as required by the law.*

Submitting in respect of the first ground of appeal, Mr. Mapunda prefaced his arguments by citing section 360 (1) of the CPA which bars an appeal to impugn the decision whose source is the appellant's own plea of guilty. Stretching further he said that the exception to this

general rule to appeal against the legality of the sentence. He contended further that the appellant pleaded guilty to the charge on his own volition.

On the issue of complying with procedures when the appellant pleaded guilty, Mr. Mapunda explained that no procedure was perforated. It was his firm submission that after pleading guilty, facts were narrated in Kiswahili language and the appellant was clear that he understood the facts. The learned counsel contended further that the charge sheet contained all ingredients of the offence. To underscore his assertion, he referred me to the decisions in **Michael Adrian Chaki v Republic,** Criminal Appeal No. 399 of 2019 at page 7 and 8 (unreported).

In respect of the second ground of the appeal (combination of the 3rd and 4th grounds of appeal), Mr. Mapunda's conception is that the appellant pleaded guilty to all ingredients of the offence. He argued that the charge clearly showed that the appellant used violence to steal. To him the appellant was not justified to fault the trial court because he admitted that he used force to steal the cell phones.

Resting his submission, the learned Counsel asserted seeking refuge in **Athuman Bakari Meja @ Bodde v R,** Criminal Appeal No.

179 of 2021 (unreported) that the appellant's plea was unequivocal because he pleaded to all ingredients stated in the charge sheet.

Having submitted as such he prayed this court to find the appeal unmerited and dismiss it in its entirety.

In his terse rejoinder, the appellant did not tackle the grounds of his complaints. He simply informed this court that he did not commit the charged offence and that he did not understand the offence he committed. At another point he submitted that he did not understand what he was responding to in court because he was threatened and tortured at police station. He also interrogated why the knife was not tendered in evidence.

Having carefully examined the record, grounds of appeal and submission, I am convinced that this appeal may be disposed of by considering whether or not the appellant's plea was unequivocal and whether the procedure was not complied with.

I begin by stating what is otherwise a known legal principle. This is to the effect that appeals against convictions on a plea of guilty can only lie where, upon the admitted facts, the accused could not in law have been convicted of the offence charged. This position enduring

principle is enshrined in section 360 (1) of the CPA whose substance provides as hereunder:

> *"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."*

This means that, while sentences can be challenged with a minimum of legal obstruction, convictions are challengeable in limited circumstances which are also articulated in a number of judicial pronouncements. The decision in the legendary case of **Laurence Mpinga v. Republic** [1983] TLR 166, has provided such kind of circumstances. Subsequent decisions have built on the principles propounded in the cited case. These include the decision in **Msafiri Mganga v. Republic**, CAT-Criminal Appeal No. 57 of 2012 (unreported), in which the Court of Appeal of Tanzania held as follows:

> *"... one of the grounds which may justify the Court to entertain an appeal based on a plea of guilty is where it may be successfully established that the plea was imperfect, ambiguous or unfinished and, for that reason, the lower court erred in law in treating it as a plea of guilty. This goes to insist therefore that* ***in order to convict on a plea of guilty, the court must in the first place be satisfied that the plea amounts to an admission of every constituent of the charge and the admission is unequivocal."*** [Emphasis supplied].

The Court of appeal closely examined criteria suggested in the foregoing decisions, it expounded them in the case of **Michael Adrian Chaki** (supra) and held that there cannot be an unequivocal plea on which a valid conviction may be founded unless the following conditions are conjunctively met:

> *1. The appellant must be arraigned on a proper charge. That is to say, the offence section and the particulars thereof must be properly framed and must explicitly disclose the offence known to law;*
>
> *2. The court must satisfy itself without any doubt and must be clear in 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 plead 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 terms of section 228(1) of the CPA.*
>
> *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 plead 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 (see **Akbarali Damji vs R.** 2 TLR 137 cited by the Court in **Thuway Akoonay vs Republic** [1987] T.L.R. 92);*
>
> *6. Before a conviction on a plea of guilty is entered, the court must satisfy itself without any doubt that the facts adduced disclose or establish all the elements of the offence charged.*

From this excerpt arises a question on whether the plea of guilty that bred the instant disquiet is predicated upon facts that are incapable of supporting the conviction. The answer to this question is derived from the trial court's proceedings held on 30th August 2023, the date on which the appellant was called upon to make a plea on the charges levelled against him. For ease of reference, it is apposite that the said proceedings be reproduced as hereunder:

> *Date: 30/08/2023*
>
> *Coram: Hon. O.N. Ngatunga – PRM*
>
> *For Republic: D/CPL Hamis, Public Prosecutor*
>
> *Accused: Alphonce Alto Haule*
>
> *R/O: Leticia H. Mapunda*
>
> ***D/CPL Hamis, learned Public Prosecutor for Republic:*** *Hon. Magistrate, before proceed, I pray to amend charge under section 234(1) of the Criminal Procedure Act, [Cap. 20, R.E. 2022] to omit the second count and knife in the former charge used when the offence was committed to the victim.*
>
> ***Accused:*** *Hon. Magistrate, I concede prayer sought by learned Public Prosecutor.*
>
> ***Court:*** *Request to amend charge under section 234(1) of the CPA, [Cap. 20 R.E. 2022] to omit or remove the second count, the offence of grievous harm contrary to section 255 of the Penal Code, [Cap 16, R.E. 2022] and the instrument (knife) used at a time of committing the offence to the victim is be and hereby granted. Let the amended charge read over and explain to*

accused person in a language he understand and comprehend which is Kiswahili and in reply he state as follows:-

O.N. Ngatunga

PRM

30/08/2023

Accused Plea: *"Kweli nilichukua kwa nguvu au nilinyang'anya simu mbili (2) aina ya NOKIA yenye Imei Nos. 356613721374338 na 356613723374336 pia simu ya ITEL yenye Imei Nos. 350595658755959 na 350595658755942 zenye thamani ya Tshs. 52,000/= tu mali ya Magdalena Julius Mwambojoke."*

Accused Signature: ***XXXXXX***

Court: *A plea of guilty on the offence of Armed Robbery contrary to section 287A of the Penal Code, [Cap. 16, R.E. 2022] has been entered to accused person.*

O.N. Ngatunga

PRM

30/08/2023

C/CPL Hamisi, learned Public Prosecutor: *Hon. Magistrate, accused person admit committing the offence of Armed Robbery, the case was set for continuation of delivering facts of the case to a state left on last date however, I pray to remind accused the previous facts of the case that were delivered on 09/08/2023.*

Hon. Magistrate, on those facts of the case, I pray to omit the instrument (knife) which was used at a time of committing the offence to the victim in reflection to the amended charge.

O.N. Ngatunga

PRM

30/08/2023

Accused: *Hon. Magistrate, I concede what has been prayed for by the learned Public Prosecutor.*

Court: *Facts of the case which were delivered on 09/08/2023 are adopted with reservation or with its amendment sought by Prosecution of removing instrument, which is a knife which was used on fateful date. (The rest of facts are adopted) to form part and parcel of the record of this court. Again, the facts of the case adopted with reservation are read over and properly explain in a language he understands, which is Kiswahili in reply thereto or accused person asked whether he admits them.*

O.N. Ngatunga

PRM

30/08/2023

Accused: *Hon. Magistrate, the facts of the case delivered by prosecution are correct summary of what was happened.*

Signature of accused: ***XXXXXXX***

Signature of Public Prosecutor: ***XXXXXXX***

O.N. Ngatunga

PRM

30/08/2023

Facts which were adduced are as follows:

"FACTS OF THE CASE

Hon. Magistrate, accused person is called Alphonce Alto Haule, 22 years old, Mkisi by tribe, Christian, peasant of Mkali village and later migrated to Hongi village in Nyasa District. The victim of incident is called Magdalena Julius Mwambojoke, 34 years old, Myakyusa by tribe, Christian, Teacher of Muungano Primary School, a resident at Hongi Village, Nyasa District in Ruvuma Region.

That, accused person and the victim are known each other, they are the village mate and accused person was carrying/ferring the victim on his Motorcycle/Bodaboda sent her different places within and outside the village.

It is alleged that, on 24th day July, 2023 accused person was at the village of Hongi at around 20:00 hrs accused person met the victim while holding knife threatened her to stop. The victim did not stop, she was walking, as a result, accused person jump and assault her cut wound on three fingers of the left palm and tied her neck.

***Hon. Magistrate, thereafter, accused person entered his hand** into the pockets of the victim's gown, take out two (2) mobile phones makes NOKIA with Imei No. 356613721374338 na 3566137231374336 together with ITEL with Imei No. 350595659755942 na 350595658755959 bot valued Tshs. 52,000/=.*

*However, on 29/07/2023 accused person **was arrested by** the police officer No. J. 890 pc Yasin and taken him to the police station. Meanwhile, accused person was inspected and found two (2) mobile phone makes ITEL and NOKIA in the presence of Modestus Mapunda, Chance Haule and MG. Emmanuel Chiwinga. Thereafter, the victim was summoned, shown those mobile phones as a result, she identifies them to be her properties stolen by accused person on the fateful date.*

Hon. Magistrate, and accused person, police officer J. 890 PC Yasin, MG Emmanul Chiwinga and Chance Haule signed the certificate seizure of two mobile phones. Further, accused was interrogated and recorded cautioned statement by police officer G. 4181 D/CPL Meck whereof he confessed committing such an offence to the victim.

Hon. Magistrate, the victim was taken to Mkali Dispensary for medical examination and treatment. On 01st day of August, 2023 accused person brought to his honorable court to face the charge. Accused person was not supposed to reply anything because the Justice of the Peace had no jurisdiction to try the case. To date, the same charge read over before this court for trial and accused person admitted admit committing the offence of Armed Robbery to the victim.

Hon. Magistrate, the prosecution prays to produce two mobile phone makes ITEL and NOKIA as part and parcel of proceedings."

Court: *Two (2) mobile phones make NOKIA and Itel are admitted as part and parcel of the proceedings.*

O.N. Ngatunga

PRM

30/08/2023

D/CPL Hamis, Public Prosecutor *Hon. Magistrate, I pray for your honourable court to consider section 228(2) of the Criminal Procedure Act [Cap. 20, R.E. 2022].*

Accused: *Hon. Magistrate, I concede it.*

VERDICT

Accused person admit the facts of the case which constitutes the ingredients of the offence of Armed Robbery contrary to section 287A of the Penal Code, [Cap. 16 R.E. 2022]. As such, and as long as accused person pleaded guilty to the charged offence and admitted facts of the offence which in total constitutes of reflect the offence charged. This court satisfies that the plea is unequivocal.

This court find out that accused person Aphonce Alto Haule is guilty of the offence of Armed Robbery under section 287A of the Penal Code, [Cap. 16, R.E. 2022] and I convict him forthwith.

O.N. Ngatunga

PRM

30/08/2023

Court: *The prosecution is invited to address the previous conviction committed by the convict.*

O.N. Ngatunga

PRM

30/08/2023

D/CPL Hamis, Public Prosecutor: *Hon. Magistrate, we don't have previous record of conviction committed by the convict.*

O.N. Ngatunga

PRM

30/08/2023

Court: *The convict is hereby invited to address the mitigating factors.*

O.N. Ngatunga

PRM

30/08/2023

The convict: *Hon. Magistrate, it is my first offender, I have defendants my spouse Iman Mwagabwa who is pregnant, parents and four (4) children. All of them depends me for their livelihood. I pray for leniency sentence as I have repented after committing the offence. Also, I have time to build myself, the society and the Nation.*

O.N. Ngatunga

PRM

30/08/2023

While there can be no qualms that the facts constituting the offence were read, as deduced from the record, the question that arises immediately is whether such facts constituted all ingredients of the offence with which the appellant was charged. This question takes into account the fact that the prosecution is, at all times, duty bound to prove that the offence with which the accused is charged has all the ingredients disclosed and proved. This is irrespective of whether the accused pleads guilty to the charges. The rationale is that facts of a case stand as a substitute of formal evidence that would be adduced were the accused to plead not guilty to the charge. Where proof of the ingredients requires that an expert analysis be conducted, then the said analysis must be conducted and the findings of the said analysis should constitute part of the exhibits to be tendered. In so doing, they become part of the facts to be read over and pleaded or admitted to.

This imperative requirement was amply stated in **Josephat James v. Republic**, CAT-Criminal Appeal No. 316 of 2010 (unreported), wherein the Court of Appeal of Tanzania held as follows:

"It is trite law that a plea of guilty involves an admission by an accused person of all the necessary legal ingredients of the offence charged. The duty is that of the prosecution to state the facts which establish the offence with which an accused person is charged. The statement of facts by the prosecution serves two purposes: it enables the magistrate to satisfy himself that the plea of guilty was really unequivocal and that the accused has no defence, and it gives the magistrate the basic material to assess sentence."

See: **G & S Transport Limited v. The Director of Public Prosecutions & 2 Others**, HC-Criminal Revision No. 1 of 2020; and **Thereza Shija v. Republic**, HC-Criminal Appeal No. 198 of 2019 (both unreported).

The reasoning in the cited decision reflects what was accentuated in **Adan v. Republic** [1973] EA 445, wherein Spry V.P. (as he then was), laid out very elaborate and imperative procedural steps that must be applied by a trial court when an accused person is arraigned in court and pleads guilty to a charge. He held:

"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 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 guilty, the magistrate should record the charge 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.***" [Emphasis is supplied].

Where the case involves theft and proof requires that a property stolen be tendered in evidence, the mandatory requirement is that such property must be identified. In **David Chacha and 8 Others v. Republic**, CAT-Criminal Appeal No. 12 of 1997 (unreported), it was held:

"It is a trite principle of law that properties suspected to have been in possession of accused persons should be identified by the complainant conclusively. In a criminal charge it is not enough to give generalized description of the property."

Glancing through the proceedings, I get contented with the procedural aspects which were applied in taking the plea of guilty. Indeed, they were not perforated. The flawless part of the proceedings notwithstanding, it is the question of adequacy of the evidence to

support the charge that is troubling. The admitted facts of the case, went further proving that the two mobile phones allegedly found in the appellant's possession was a stolen property belonging to the victim stated in the charge sheet. I am certain that the requirements in the just cited decisions were conformed to in proving the allegation that the property allegedly found in the appellant's possession was truly stolen from the victim and that it belonged to the alleged owner. It was clearly shown that prior stealing the two mobile phones, the appellant threatened the victim and through violence, he managed to get hold of the two mobile phones which were tendered in court without being subjected to objection. I am satisfied the prosecution discharged its duty of proving the case to a required standard.

I take the view that with sufficient descriptive account of the facts surrounding this case made the plea of guilty and admission of facts unequivocal as required by the law. As such, the trial magistrate was justified ground a conviction basing on it. It is simply that the appellant's plea of guilty amounted to an admission of every constituent part of the charge of armed robbery. I say so because his plea was detailed, admitted to all narrated facts by stating that it was a summary of what happened. I entertain no doubt in my mind that factors established in

the case of **Michael Adrian Chaki** (supra) particularly 1, 2, 3 and 5 were met. I am persuaded to agree with Mr. Mapunda that the charge sheet laid at the appellant's door was proper as it discloses the offence, section and particulars shows the offence known to law. Much as the law demands, the charge was fully explained to the appellant before he was asked to plea and the language used was Kiswahili. There is no complaint raised by the appellant that he did not understand Kiswahili. He even expressed himself in Kiswahili when he appeared before me on 19th January, 2024. I am inclined, therefore, to believe that the appellant fully comprehended the charge facing him. In addition, he admitted the incriminating particulars of his conduct when he was called to plea. I have all the reasons to believe that what happened in court was done transparently and the appellant knew very well the nature of the offence he was charged with and the punishment he was going to meet.

I have spent time to read the facts and I am behooved to agree with the trial court that they clearly put to light what the appellant did. All elements were established as per condition under items 4 and 6. I am further fortified by the appellant's mitigation at page 15 of the trial court's typed proceedings. The appellant said, I quote for ease of reference:

"... I pray for leniency sentence as I have repented after committing the offence. Also, I have time to build myself, family, the society and the nation."

This electrifies the notion that the appellant understood the charge, the facts narrated and the end result of his actions.

In consequence of all this, I take the view that the appellant's complaints that the plea was equivocal, he did not plead to all the ingredients of the offence, procedures in taking the plea were perforated and that the trial magistrate did not record exactly what he was stating, an afterthought and not backed up by any strong argument or supported by the record.

Finally, the merit lacking appeal is dismissed in its entirety. This court upholds conviction and sentence inflicted on the appellant.

DATED at **SONGEA** this 22nd day of January, 2024

J. M. KARAYEMAHA
JUDGE