THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

(MOROGORO DISTRICT REGISTRY)

AT MOROGORO

CRIMINAL APPEAL NO. 95 OF 2022

(Arising from Traffic Case No. 85 of 2022, at the District Court of Kilosa)

RAMADHANI SELEMANI NGONI ..... APPELLANT

VERSUS

THE REPUBLIC ..... RESPONDENT

REASONS FOR THE DECISION

Last Court Order on: 05/12/2022
Reasons for decision on: 07/12/2022

NGWEMBE, J

This appeal is a dissatisfaction of the sentence meted by the trial court passed on 14th July, 2022. The charge when read over to the accused, he pleaded guilty, convicted for his plea of guilty and sentenced to pay fine of TZS. 20,000/= together with two years' imprisonment.

Brief recap of the case originated from a traffic offence whereby the appellant while driving a motor vehicle bearing registration No. T 150 DKS/T 669 DKS make HOWO along Morogoro – Iringa Road within Kilosa District at Mikumi National Park knocked a giraffe and caused damage to that motor vehicle. Due to that accident, the appellant was charged in court under section 61 & 63 of the Road Traffic Act Cap 168

R.E. 2019. Since the appellant pleaded guilty, the court proceeded to convict and sentenced him accordingly.

The appellant found his way to this court clothed with five (5) grounds; however, the most crucial ground is on the applicable law cited in the charge sheet. That sections 61 & 63 of the Act do not tally with the contents of the offence itself. Above all, the sentence not only violated penal statutes but also same was unfounded as I will discuss later on.

On the hearing date, the appellant appeared in person, while the Republic was represented by Ms. Jamilah Mziray, learned State Attorney. In arguing his appeal, the appellant simply relied on his grounds of appeal and prayed this court to consider them thoroughly. In turn the learned State Attorney, rightly supported the appeal based on the first ground of appeal, that the trial court erred in law in convicting and sentencing the appellant based on inapplicable sections of law. Also argued that the whole proceedings did not tally with the incidence itself. Thus rendered the whole proceedings null and void.

Following the above reasoning of the learned State Attorney, together with perusal to the records of trial court, this court proceeded to order the appellant be released from prison immediately, while reasons for such decision were reserved. Consequently, this is the Court reasoning for the decision.

It is settled I presume that an accused when pleads guilty on unknown charge or unknown law that plea is as good as no plea at all. Always there are certain preconditions which a plea of guilty must comply with. Those preconditions were itemized in many precedents including in the case of **Laurence Mpinga Vs. R, [1983] T.L.R. 166**

and **Josephat James Vs. R, Criminal Appeal No. 316 of 2010, (CAT, Arusha Registry)**. In the latter case of **Josephat James Vs. R,** the Court of Appeal itemized those preconditions as follows:-

(i) 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;

(ii) An appellant pleaded guilty as a result of a mistake or misapprehension;

(iii) ***The charge levelled against the appellant disclosed no offence known to law,*** *and*

(iv) ***Upon the admitted facts, the appellant could not in law have been convicted of the offence charged.***

The same position was repeated in the case **Ramadhani Haima Vs. R, Criminal Appeal No. 213 of 2009, (CAT).**

As seen above when any one of the above is observed, may justify the superior court to entertain an appeal based on a plea of guilty, but in the absence of any of those grounds or any other relevant legal or factual issue, the plea of guilty is considered correct capable of convicting the accused on his voluntary plea of guilty.

Equally important is the reasoning of Lord Duffus P, siting in the Court of Appeal for East Africa, in the case of **David K. Gatihi Vs. R, Criminal Appeal No. 118 of 1972** where held: -

"The courts are concerned not to convict an accused person on his own plea unless it is certain that the accused

understands the charge and intended to plead guilty and that he has no defence to the charge"

The above quotation insisted on the settled principle of law that, plea of guilty must be made in a proper charge comprising a known offence in law.

In respect to this appeal, two circumstances raise serious doubt which led into disqualification of the plea itself. First is the section preferred against the accused/appellant. Second is the recording of plea itself and lastly is on the sentence which raised double jeopardy to the accused/appellant.

The statute and precedent, are very clear on the procedure to be adopted in plea taking. Under section 228 (1) (2) of **the Criminal Procedure Act Cap 20 R.E 2022**, the accused person shall be informed on the charge in the language he understands well. His reply should be recorded as follows: -

"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."*

In our case, it is recorded that the appellant after reading the charge to him, he replied "It is true", such reply has met with serious criticism for more that a decade now. The phrase *"It is True"* cannot be treated as unequivocal plea of guilty. Authorities are numerous to that effect, including but not limited to **R, Vs. Yonasani Egalu & Others, (1942) 9 EACA 65; R Vs. Tarasha (1970) HCD 252; Buhimila Mapembe Vs. R, [1988] T.L.R. 174;** and **Daniel Shayo Vs. R,**

Criminal Appeal, No. 234 of 2007 (CAT Arusha). The bottom line is as it was given in **Buhimila Mapembe's** case: -

> *"The words "it is true" when used by an accused person may not necessarily amount to a plea of guilty, particularly where the offence is a technical one"*

Such plea of "it is true" alone ought to be accompanied with clear and unambiguous explanation of pleading unequivocally.

I am further troubled by the section preferred against the appellant in the charge sheet. In fact, section 61 of the Road Traffic Act has totally different meaning from the incidence itself. As rightly narrated above, the appellant knocked giraffe when was plying on the road along Mikumi National park. Unfortunate, the charge preferred against the appellant was the offence under section 61 of the Act. Such section is quoted hereunder to print a clearer picture of the contents of that section: -

> *"Any person who throws any object at a motor vehicle or trailer or at any person in or on such motor vehicle or trailer or places any object on any road or by any means impedes the progress of any motor vehicle or trailer whereby injury or damage might be caused to such motor vehicle or trailer or to any person therein shall be guilty of an offence"*

This section had nothing to do with knocking animals like giraffe in the National Park. Also, the appellant did not place any object on a road which caused damage to the vehicle rather he was a driver of the motor vehicle which knocked giraffe. From the face of it, the charge against the appellant ought not to be admitted in court. Even by mistakenly admitting such charge, a serious trial magistrate ought to peruse it before proceeding with such unrelated offence to the incidence.

Repeatedly, the Court of Appeal provided a long living guidance on how to admit charges for court use in **Criminal Appeal No. 153 of 1994** between **Oswald Mangula Vs. R** where the Court held:-

> *"We wish to remind the magistracy that it is salutary rule that no charge should be put to an accused before the magistrate is satisfied, inter alia, that it disclosed an offence known to law, it is intolerable that a person should be subjected to the rigors of trial based on charge which in law is no charge. The charge laid at the appellant's door having disclosed no offence known in law all the proceedings conducted in the District Court on the basis thereof were nullity since you cannot put something on nothing".*

In similar vein the Court of Appeal used strong words to warn all magistrates from acting on a defective charge in **Criminal Appeal No. 253 of 2013 between Abdallah Ally Vs. R,** the court observed: -

> *"...being found guilty on a defective charge based on wrong and/or non-existent provisions of the law, it cannot be said that the appellant was fairly tried in the courts below ...In view of the foregoing shortcomings, it is evident that the appellant did not receive a fair trial in court. The wrongly and/or non-citation of the appropriate provisions of the penal code under which the charge was preferred, left the appellant unaware that he was facing a serious charge of rape...".*

The same wording was repeated in the case of **Musa Mwaikunda Vs. R [2006] T.L.R. 387.** Legally, failure to charge properly the accused/appellant by citing proper sections of law, renders the whole

proceedings incompetent, hence nullity. What is founded on a nullity renders even the appeal nullity.

Since the charge preferred against the appellant was found on improper provision of law, and due to all what I have discussed above, I find the whole trial by the trial court was nullity, hence the conviction and sentence were illegal.

In the light of the above consideration, I allowed the appeal of Ramadhani Selemani Ngoni and ordered him be released immediately from prison unless otherwise held therein for other lawful cause.

Order accordingly.

Dated at Morogoro in chambers this 8th day of December, 2022.

P. J. NGWEMBE

JUDGE

08/12/2022

Court: Delivered at Morogoro in Chambers on this 8th day of December, 2022 in the absence of the appellant and in the Presence of the Edgar Bantulaki State Attorney for the Republic.

Right to appeal to the Court of Appeal explained.

THE HIGH COURT OF TANZANIA

P.J. NGWEMBE

JUDGE

08/12/2022