

TANZANIA / JUDGMENT

20131115 TZCA Dar es Salaam

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IN THE COURT OF APPEAL OF TANZANIA AT DAR ES SALAAM CRIMINAL APPEAL NO. 413 OF 2007 (CORAM: KILEO, J.A, MANDIA, J.A., And JUMA, J.A.) ALANUS S/O ATHANAS @ RAS APPELLANT VERSUS THE REPUBLIC ■■■ ■■■'■ I ■■ • RESPONDENT I • I (Appeal from the decision of the High Court of Tanzania at Dae es Salaam) (Nyerere, J.) Dated 22nd day of August, 2007 in Criminal Appeal No. 51 of 2006 REASONSFORJUDGMENT 22nd October & 26th November, 2013 KILEO, J. A.: On 22 nd day of October, 2013 we allowed the appeal by Alanus s/o Athanas @ Ras and ordered his immediate release from prison. We reserved our reasons for so doing which we now give. The appellant who was charged along with four other persons was, on his own plea of guilty convicted of "armed robbery" contrary to sections "265'~__,and 286 of the Penal Code and of grievous harm contrary to section 225 of the Penal Code in the District Court of Kilombero District at Ifakara 1 and was sentenced to serve 15 years and I year imprisonment respectively. At the- trial he appeared as the 5th accused. His appeal to the High Court bore no fruit hence this second appeal. The appellant appeared before us in person, unrepresented. Being a layman he had nothing much to tell us except to implore us to consider his · grounds appeal. The appellant had filed three grounds of appeal, however basically his major complaint is to be found in his first ground which is: That both the trial magistrate and the appellate Judge erred in law and fact by taking into account the appellant's plea of guilt whose · wording were . not recorded in accordance with the mandatory provision of section 228 (2) of the C.P.A CAP 20 RE 2002. The responde~t Republic was represented by Mr. Zuberi Mkakatu who did not resist the appeal. There was only one main issue before us and this is whether the appellant's plea of guilty was unequivocal. Supporting the appeal, Mr. Mkakatu submitted that the particulars in the charge sheet did not support the charge of armed robbery, nor were the ingredients stated in the facts sufficient to establish the second count of grievous harm. 2 To start with, the section that was cited in the charge sheet was not one of armed robbery. Moreover, as submitted by the learned State Attorney, neither did the particulars of offence nor the facts that were read out to the accused at the trial establish the charges that the appellant was faced with. It is pertinent to reproduce what transpired in the trial court at length on the day the appellant was convicted on his own plea of guilty in order to appreciate why the appeal had to be a-llowed. Below is what took place: "Charge: 1st Count- Offence Section and Law: Armed Robbery c/s 265, 286 of the Penal Code Cap. 16 of the law amended by Act No. 10/1989. ' Particulars of Offence: That the above named accused persons are jointly and together charged on the 4h day of March, 2004 at or about 01 :30 .hrs at Mipinguni

area - Ifakara within, Kilombero District in Morogoro Region did steal on (sic) firearms make short gun greener No. 62174 valued at T.Shs. 750,000 ; - fire ammunition in order to steal the said property. Z,d Count: Offence Section and Law:- Grievous Harm c/s 225 of the Penal Code Cap. 16 of the laws. Particulars of offence:- That the above named accused persons are jointly charged on the same date, time and place at Mipinguni area Ifakara 3 within Kilombero District in Morogoro region did cause grievous harm to one SHAMTE s/o ATHUMANI by cutting him with a bush knife on his left leg caused him to suffer cut wound. Date: 12/5/2005 ' Coram: P.M. Mabula - DM

Prosecutor: A/Insp. Augustine Accused: - Present BfClerks: Present P. P. - I pray to substitute charge. Court: - New charge is read over to the accuseds who are asked to plead them to: FIRST COUNT 1st Accused: It is not true zid Accused: It is not true :J'd Accused: It is not true 4fh Accused: It is not true Sh Accused: 'It is true' SECOND COUNT 1st Accused: It is not true zid Accused: It is not true :J'd Accused: It is not true 4fh Accused: It is not true Sh Accused: 'It is true' 3d COUNT 1st Accused: It is not true 4 ,27d Accused: It is not true :J'd Accused: It is not true 4fh Accused: It is not true sth Accused: 'It is true' COURT: - Entered a plea of not guilty to the 1,2,3 and the 4fh accused and guilty to the sth accused. SGD. P.M Mabula - DM 12/5/2005 Public prosecutor . : - I am ready. The accused is charged for three counts. He committed the offence being in the company of other accused at Miwangani area. They also did cause harm to Shamte Athumani and Tryphone Mwaluka. They were arrested and charged with this offence. I pray to tender a short gun greener as exhibit. XX P.I. Also a P. F.3 of Shamte Court: P.2 SGD P.M MABULA - DM 12/5/2005 Also a cautioned. Court: P.3 SGD P.M MABULA - DM 12/5/2005 Also a gun used to commit offence. Court. P.4 SGD P.M MABULA - DM 12/5/2005 Accused. Facts are correct. SGD. P.M MABULA - DM 12/5/2005 Court: Accused is convicted as charged for his own plea of guilty to the charge of 1st and ,27d counts. 5 SGD P.M MABULA - DM 12/5/2005 P.P. I have no previous record. MITIGATION OF THE ACCUSED: I pray for lenient. SENTENCE: Accused is sentenced to as follows: 1st Count: To serve 15 (fifteen) years Imprisonment. Z,d Count: To serve one (1) year imprisonment. ORDER: - Sentences to run concurrently. P.P. Investigation is complete ORDER: Hearing on 26/5/2005. AFRIC SGD P.M MABULA - DM 12/5/2005" The above speaks for itself and we need not belabor ourselves with a long discourse. In the first place, section 265 under which the appellant was charged does not cover armed robbery. This section relates to sanction for theft. Secondly, the particulars of offence did not contain the ingredients necessary in a charge of armed robbery. In an armed robbery case there must be the threat of or use of violence in order to obtain or retain the thing stolen or to prevent or overcome resistance to its being stolen or retained. There was no mention of the threat of or use of violence in the particulars of offence. The reading of the facts by the prosecution to which the appellant was recorded as having admitted was of no help either. The facts as we have reproduced above were at best bizarre and could not be said to have formed the basis for convicting the appellant of the charges that had been laid against him. His plea was certainly equivocal. It was in the light of the above considerations that we came to the conclusion that the appellant's conviction could not be sustained. DATED at DAR ES SALAAM this 15th day of November 2013. E. A. KILEO JUSTICE OF APPEAL W. S. MANDIA JUSTICE OF APPEAL I. H. JUMA JUSTICE OF APPEAL I certify that this I a M.A. PUTY OURTOF 7

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