

TANZANIA / JUDGMENT

CRIMINAL APPEAL NO 129 OF 2022 1

COURT
TANZLIIDECIDED
1 January 2022

Source: media.tanzlii.org · Research copy typeset by Esheria. Not court-issued or certified.

IN THE COURT OF APPEAL OF TANZANIA AT MWANZA (CORAM: LILA, J.A., KIHWELO. J.A. And ISSA. J J U CRIMINAL APPEAL NO. 129 OF 2022 CHACHA GHATI @ MAGIGE..... APPELLANT VERSUS THE REPUBLIC..... RESPONDENT (Appeal from the Judgment of the High Court of Tanzania at Mwanza) (Rumanvika. J.^ dated the 8th day of November, 2021 in Criminal Sessions Case No. 181 of 2013 JUDGMENT OF THE COURT 11th& 20thFebruary, 2025

ISSA. J.A.: The appellant, Chacha Ghati @ Magige was arraigned before the High Court (the trial court) sitting at Mwanza in Criminal Sessions Case No. 181 of 2013 for the offence of murder contrary to section 196 of the Penal Code, Cap. 16. He was tried and convicted as charged and sentenced to death by hanging. Aggrieved with the conviction, he successfully appealed to this Court vide Criminal Appeal No. 406 of 2017 which ordered a re-trial. Upon being re-tried, the appellant pleaded guilty to a lesser offence of manslaughter contrary to section 195 of the Penal Code. He was again convicted as charged, but this time he was sentenced to life imprisonment. Aggrieved with the conviction and sentence, he lodged the instant appeal. The charge against the appellant was that, on 2nd July, 2011 at about 18.00 hours at Mrito Village within Tarime District in Mara Region, the appellant murdered Macklina Isaya (the deceased). The appellant pleaded guilty to the charge of manslaughter and admitted the statement of facts when read over to him. Hence, the trial court convicted him for the offence of manslaughter and sentenced him to life imprisonment as stated earlier. The trial court relied on the appellant's own plea as well as the post-mortem report (exhibit PI) which was admitted during preliminary hearing. The facts narrated following the appellant's plea of guilty show that, the appellant and the deceased were living together and on the fateful day of 2nd July, 2011 the appellant returned home and demanded his mobile phone which he left with the deceased. The deceased refused to return it, hence a dispute ensued. The appellant with a machete on his hand attacked the deceased by slashing off both hands and stabbed her on the head and back. The deceased fell down unconscious and succumbed to her death. The appellant was arrested, charged, convicted and sentenced as indicated above. Aggrieved, the appellant has instituted the instant appeal. Initially, he lodged a memorandum of appeal containing two grounds. On 10th February, 2025 Dr. George Mwaisondola, learned advocate for the appellant, in terms of rule 73 (2) of the Tanzania Court of Appeal Rules, 2009 (the Rules) lodged a supplementary memorandum in substitution of the memorandum of appeal lodged earlier on. The supplementary memorandum contained three grounds which go thus:

1. That, the trial judge erred in law and facts by convicting the appellant and sentencing him to life imprisonment by relying on the equivocal plea of guilty taking into account inconsistency in the material facts of the case and post mortem report (Exhibit P I) which ought to have been resolved in favour of the appellant.
2. That the trial judge erred in law and facts by convicting the appellant and sentencing him to life imprisonment by considering extraneous facts or matter described as first- class domestic violence.
3. That the trial judge erred in law by his failure to consider the appellant's mitigation and the facts that he pleaded guilty for manslaughter at the earliest opportunity. When the appeal was called on for hearing, the appellant was represented by Dr. George Mwaisondola, learned advocate whereas the respondent Republic had the services of Ms. Magreth Bernard Mwaseba, learned Senior State Attorney assisted by Mr. Ibrahim Idd Salim, learned State Attorney. At the outset, Dr. Mwaisondola informed the Court that the 2nd and 3rd grounds of appeal will be argued as alternative to the 1st ground of appeal. Arguing the 1st ground, he submitted that the appellant is opposing the conviction and sentence as his plea was equivocal due to the two inconsistencies on the facts of the case vis-a-vis the post-mortem report (exhibit PI). The first inconsistency was on the date of death of the deceased. He submitted that the statement of facts shows that the deceased died on 2nd July, 2012, but in the exhibit PI the doctor indicated that he examined the body of the deceased on 3rd July, 2011 which means the body was examined one year before the deceased was killed. The second inconsistency is on the relationship between the deceased and the appellant. Dr. Mwaisondola submitted that, according to the charge-sheet and the information the deceased was Macklina daughter of Isaya, but the trial judge's finding was that she was a wife of the appellant and he marked their dispute as first-class domestic violence which was not correct. He added that although the appellant and the deceased were living together, they were not husband and wife. He concluded that the two inconsistencies make the plea equivocal. Therefore, the appellant should not have been convicted based on those facts. He prayed for the appellant to be sent back to the trial court to face his trial. Responding to the 1st ground of appeal, Ms. Mwaseba was firm that the plea was unequivocal. She took us to page 72 of the record of appeal where the appellant's plea was recorded and he pleaded guilty. She argued that the plea was clear and unequivocal. She added that according to section 360 of the Criminal Procedure Act, Cap. 20 (the CPA) there is no appeal on conviction of plea of guilty. To bolster her argument, she cited the Court's decision in *Frank s/o Mlyuka v. The Republic*, [2020] TZCA 607, TANZLII where the Court laid down four grounds upon which a convicted person can challenge a conviction on a plea of guilty. She concluded that, the appellant's case did not fall on any of the grounds mentioned in that case. Responding on the issue of inconsistencies, Ms. Mwaseba started with the exhibit PI in which she admitted that it shows that the deceased was killed on 2nd July, 2012 and the doctor examined the body of the deceased 22 hours after she was killed, which means he examined the body on 3rd July, 2012. Therefore, the fact that exhibit PI shows that he examined the body on 3rd July, 2011 it was a slip of the pen. She added that, even if the Court makes a

finding that it was an inconsistency, she argued that it was not fatal and the Court could look at other evidence for corroboration. In this case, it could look at the appellant who admitted that he killed the deceased on 2nd July, 2012. To support her argument, she cited the Court's decision in *Waziri Amani v. The Republic* [1980] T.L.R. 250 where the Court looked at the credibility of other witnesses. With respect to the second inconsistency, Ms. Mwaseba again admitted that, the deceased and appellant were living together and there was no evidence suggesting that they were married. But she submitted that it was immaterial, whether the deceased was a wife of the appellant or a daughter of somebody else, as killing a person is prohibited by law. She prayed for the dismissal of this ground for lack of merit. In rejoinder, Dr. Mwaisondola started with the case of *Frank s/o Mlyuka* (supra) and submitted that, that case laid down four grounds, but any of them can be used in lodging an appeal against conviction on the plea of guilty. In the instant case, he argued that the first and fourth conditions benefits the appellant. On the issue of inconsistency of exhibit PI he admitted that, the inconsistency on the post-mortem report could be cured by the testimony of other witnesses as in the case of *Waziri Amani* (supra) where there were three other witnesses, but in the instant case, he argued, there was no other witness. He concluded that the instant case is distinguishable and the year 2011 which was mentioned twice in exhibit PI was not a slip of the pen. Lastly, he argued that if exhibit PI is expunged the prosecution will not be able to prove that the appellant was responsible for the deceased's death. He reiterated his earlier prayer. In the determination of this appeal, the Court will first address the issue of plea of the appellant and the important questions are whether the appellant was entitled to appeal against his own plea of guilty and whether the plea was unequivocal. The law as found in section 360 of the CPA is very clear and it provides: "360 (1) An appeal shall not 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." The above provision is the general rule. However, under certain circumstances an appeal may be entertained notwithstanding a plea of guilty. This was well stated in the celebrated case of *Laurence Mpinga*

- v. *The Republic* [1983] T.L.R. 166 which has since been followed by several cases of the Court such as: *Ramadhani Haima v. The Republic*, Criminal Appeal No. 213 of 2009 (unreported), *Josephat James v. The Republic*, [2012] TZCA 159, TANZUI and *Frank s/o Mlyuka v. The Republic* (supra). Those circumstances are: -
 - 1. that, even taking into consideration the admitted facts, 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 mistake or misapprehension;
 - 3. that the charge laid at his door disclosed no offence known to law; and

4. that upon the admitted facts he could not in law have been convicted of the offence charged. In the instant appeal, part of the record of proceedings of the trial court dated 8th November, 2021 reads as follows: - "Court: Charges of the lesser offence of manslaughter c/s 195 of the Penal Code, Cap. 16 RE. 2019 read over and explained to the accused. Accused: "Ni kweli niimuua biia ya kukusudia" (it is true I killed unintentionally). Court: Entered a plea of guilty to the lesser offence of manslaughter c/s 195 of the Penal Code, Cap. 16 RE. 2019. MATERIAL FACTS OF THE CASE Mr. Frank, SA On 2/7/2012 the accused caused death of M. Isaya. The two, husband and wife ran a grocery wherein the deceased worked as assistant. This time around the spouses quarreled over a handset and same case. In the fracas the accused cut her several times with a panga (machete) on the head, back and chopped off her arms. Neema, their child who witnessed the tragedy raised alarms but he remained at large. The victim was rushed to hospital, but she died shortly and cause of death was hemorrhagic shock due to cuts (exhibit P I now readout aloud in court). The accused was arrested on 21/01/2012 hence the charges and case. Accused: "Yote nimeyasikia. Ni kweli isipokuwa nilim piga mapanga mawili, moja kichwanina jingine mikononi". (I heard everything. It is true except that I struck her twice with a machete, one on the head and another on the hands). Court: The accused is convicted on his unequivocal plea of guilty to the charges of manslaughter. "(The translation of the Swahili words was supplied) We are of the firm view that, it was not enough for the appellant to merely say "It is true I killed unintentionally" after the charge was read over and explained to him and consequently asked to plead thereto. It was expected that he would go a step further and state the name of the person he was alleged to have killed unintentionally. (See - Juma Mohamed v. The Republic, Criminal Appeal No. 272 of 2011 and Safari Deemay v. The Republic, Criminal Appeal No. 269 of 2011 (both unreported). In the latter case the Court observed: 11 Great care must be exercised especially where an accused is faced with a grave offence like the one at which attracted life imprisonment. We are also of the settled view that it would be more ideal for an appellant who has pleaded guilty to say more than just, "It is true". A trial court should ask an accused to elaborate in his own words as to what he is saying "is true". In the same vein, when the facts were read over to him it was not expected that in response thereto he would say merely that: - "I heard everything. It is true except that I struck her twice with a machete, one on the head and another on the hands". Rather, it was expected that he would go further and state exactly what he admitted. In fact, what he admitted using those words is not admission at all as the appellant disputed the number of wounds he inflicted as described in the exhibit PI and the statement of facts. Therefore, the plea was imperfect and unfinished. Furthermore, we agree with the learned advocate for the appellant that the statement of facts read at the trial court were inconsistent with the charge and information levelled against the appellant. Firstly, the name of the deceased appearing in the facts read out to the appellant is 10 different to the name appearing in the charge. The appellant was accused of murdering Macklina Issay, but the statement of facts read M. Issaya. Secondly, the question on whether the appellant and the deceased were husband and wife or spouses was not in the charge or information. Thirdly, the issue that they quarreled or there was a fracas did not feature anywhere in the information. Lastly, the appellant was arrested on

21st January 2013 and not 21st January 2012. Therefore, we agree with the learned advocate for the appellant that, cumulatively, on the admitted facts the appellant could not in law have been convicted of the offence charged. Consequently, in the absence of the above information it will follow, like a day follows a night, that going by the decision in Mpinga (supra) and Josephat James (supra) the appellant's plea was "imperfect and unfinished" and upon the admitted facts cumulatively he could not in law have been convicted of the offence charged. Therefore, for these reasons the trial court erred in treating it as unequivocal plea of guilty. When all is said and done, the cumulative effect of the above findings is that there is merit in this appeal. We quash and set aside all the proceedings, conviction and sentence of the trial court. On the way forward, the appellant's advocate implored us to remit the file to the trial court so that the appellant could face his trial. But in the circumstances ii of this case where the appellant has been in custody for the past thirteen years, we are of the view that the time spent incarcerated is sufficient and we hereby order his immediate release from prison unless he is being held for other lawful cause. DATED at MWANZA this 18th day of February, 2025. S. A. LILA JUSTICE OF APPEAL P. F. KIHWELO JUSTICE OF APPEAL A. A. ISSA JUSTICE OF APPEAL The Judgment delivered this 20th day of February, 2025 in the presence of the Appellant in person and Mr. Ibrahim Idd Salim, learned State Attorney for the respondent/Republic is hereby certified a true copy of the original. D. P. KINYWAFU DEPUTY REGISTRAR COURT OF APPEAL 12

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE	https://media.tanzlii.org/media/judgment/326258/source_file/97288abbe10d7e09/CRIMINAL_APPEAL_NO_129_OF_2022_1.pdf
CASE PAGE	https://chat.esheria.ai/case-law/tanzania/chacha-ghati-magige-v-the-republic-Pleaofguilty-tanzlii-2022--6a3ea52b3b1caa91298247f1

Prepared on 13 October 2026 · Esheria