

TANZANIA / JUDGMENT

dickson mwamkunga vs republic

2015 tzhc 2153 30 april 2015

COURT
TZHCDECIDED
30 April 2015

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IN THE HIGH COURT OF TANZANIA AT MBEYA DC. CRIMINAL APPEAL NO. 25/2015 (Original Criminal Case No. 25/2015 in the District Court of Mbozi at Vwawa) DICKSON MWAMKUNGA..... APPELLANT VERSUS THE REPUBLIC.....RESPONDENT

JUDGMENT

Date of Judgment: 30/04/2015 NGWALA, J. The appellant was convicted and sentenced to a term of ten

- (10) years imprisonment for the offence of cultivating Cannabis, coca plant or portion of coca plants Contrary to Section 12(a) of the Drugs and Prevention of Illicit Traffic in Drugs Act, CAP 95. R.E. 2002. The accused person is purportedly to have entered as a plea of guilty when he said “it is true”. It is on this plea of guilty that the learned State Attorney Mr. Baraka Mgaya had conceded to the arguments in support of the Appeal by Mr. Chingilile advocate, that the plea was not an unequivocal plea of guilty as emphasized by Chipeta J in his Book “A Magistrate’s Manual” that:- “An equivocal plea simply means an ambiguous or vague plea. That is, a plea in which it is not clear whether the accused denies or admits the truth of the charge. Pleas in such terms as “It is true; I “admit” “Nilikosa” (I did wrong), ‘that is correct; and the like, though prima facie appear to be pleas of guilty, may not necessarily be so. In fact, invariably such pleas are equivocal”.
- at page 29 of A Magistrate's Manual”. Mr. Mgaya however came out with a very interesting argument for the courts consideration that, though the Republic had conceded to the 1st ground of Appeal, but it does not mean that the accused person did not commit the offence. It will be injustice for the appellant to enjoy either the ignorance or laziness of the trial court Magistrate to perform his justice effectively when taking plea of the accused person. He therefore prayed for an order for trial denovo so that justice should be seen to be done. Mr. Chingilile strongly opposed to this prayer, on the ground that the Magistrate is a learned person conversant with the Law and Rules of procedure. He there insisted that the Appeal be allowed. 2 Much as the argument by Mr. Baraka sound vital but I do not think it is valid in law, given the cited authorities in support of the procedure in taking pleas in Criminal Law that if an accused person admits the truth of the charge as provided for under Section 228 (2)

of The Criminal Procedure Act, [CAP. 20 R.E. 2002] then his plea of guilty should be recorded as nearly as possible in the words he uses and the Magistrate shall convict him and pass sentence upon and make an order against him, unless there appears to be sufficient cause to the contrary. In practice, before recording the conviction a Magistrate must hear the facts furnished or adduced by the Prosecutor commonly known as the Public Prosecutor (PP). The accused should be asked if he agrees with them; if he does and the Magistrate is satisfied that the answer of the accused person in all regards conforms to the charge then conviction should be entered. As the Magistrate in this case did not record the clear facts as admitted by the learned Attorney it is obvious that the mandatory statutory requirements of Section 228 (1), (2) and

- (3) of the Criminal Procedure Act, [CAP. 20 R.E. 2002] were not complied with, and hence his failure to do so have occasioned a failure of justice on the part of the Court. For this reason, there is nothing this Court can do except to set aside both the conviction and sentence there from. I do not see any reason to do otherwise as the case was heard by a Magistrate or court of competent jurisdiction. Let the benefit of doubt be given to the accused person. Accordingly the Appeal is allowed with an order that the appellant/accused should be released from custody unless he is detained for a lawful cause. A.F. NGWALA JUDGE 30/ 4/2015 Court: Right of Appeal to Court of Appeal of Tanzania explained. 4

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