

TANZANIA / JUDGMENT

exevia yakobo chipate another vs republic 2023 tzhc 23812 27 november 2023

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TZHCDECIDED
27 November 2023

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THE UNITED REPUBLIC OF TANZANIA JUDICIARY IN THE HIGH COURT OF TANZANIA
MTWARASUB- REGISTRY AT MTWARA CRIMINAL APPEAL CASE NO 96 OF 2023 (Originating
from Criminal Case No 77 of 2023 in the District Court of Nanyumbu at Mangaka)L; EXEVIA
YAKOBO CHIPATE 1st APPELLANT MESHAKI WATTI
MWAKA 2nd APPELLANT HAMISI AMIRI SIPATINI 3rd
APPELLANT VERSUS THE REPUBLIC RESPONDENT X JUDGMENT &
27th November 2023 LALTAIKA, J. The appellants herein EXEVIA YAKOBO CHIPATE, MESHAKI
WAITI MWAKA and HAMISI AMIRI SIPATINI herein after referred to as the 1st, 2nd and 3rd
appellants respectively or collectively simply as appellants, were arraigned in the District Court of
Nanyumbu at Mangaka Page 1 of 9 charged with two counts of 1. Conspiracy c/s 384 of the Penal
Code Cap 16 RE 2022 and 2. Animal Stealing c/s 265 and 268 of the Penal Code (supra). It was the
prosecution's story that on 16/8/2023 at 10:00 hours at Mangaka Village in Nanyumbu, Mtwara
Region, the appellants conspired and did steal 8 goats, property of one Faraja Betram Mbena.
When the charge was read over and explained to the appellants (then accused) they pleaded
guilty to both counts. The trial court convicted them as per their own plea of guilty and
proceeded to sentence them to four years imprisonment on the first count and 7 years for the
second count. Dissatisfied, the appellants have appealed on two grounds.

1. That the appellants pleaded guilty equivocally.
2. That the trial magistrate erred in law by convicting the appellants basing on police reads (sic!) which was made under intimidations. When the appeal was called for hearing, the appellants appeared in person, unrepresented. The respondent Republic, on the other hand, enjoyed the legal services of Mr. Melchior Hurubano, learned State Attorney. (The appellants did not have much to add except an earnest prayer that their expounded grounds of appeal be duly considered. This cleared the way for the learned State Attorney whose submission is summarized in the next paragraphs. Mr. Hurubano started off by stating that he would address only one ground, stating that he could not understand the other one, which reads, Page 2 of 9 "That the trial magistrate erred in law by convicting the appellants

based on police reads which was made under intimidation." On the first ground, in which it was the appellant's complaint about their plea being equivocal, Mr. Hurubano objected to the ground, maintaining that their plea was unequivocal. He passionately referred to The Magistrate's Manual 3rd edition 2010 by B.T. Chipeta, a well-known book in the judicial circles. He stated that the learned author defines an equivocal plea as a vague appeal that does not clearly show whether the appellant is accepting or denying the offense. ;< Mr. Hurubano proceeded to quote the appellants' responses from page 1 of the trial court proceedings, asserting that their pleas indicated an acknowledgment of all the ingredients of the charge. He also cited the case of Paskali Kamala v. Republic Crim Appeal No 457 of 2018 Court of Appeal of Tanzania (CAT), Arusha, which outlined the requirements for a plea to be unequivocal according to section 228(1) and (2) of the Criminal Procedure Act Cap 20 RE 2022 (the CPA). He argued that the appellants' pleas met these requirements, as they clearly admitted guilt when asked about their plea. Mr. Hurubano further referenced section 360(1) of the CPA, stating that there is no appeal against conviction on an accused person's plea, except under conditions specified in the case of LAURENCE MPINGA V. REPUBLIC TLR [1983]. He noted that these conditions were elaborated on in the case of MICHAEL ADRIAN CHAKI V. REPUBLIC Crim Appeal No 396 of 2019, emphasizing that for a plea to be considered unequivocal, it must satisfy specific conditions: Page 3 of 9

- (i) Arraignment on a proper charge: The charge was proper in this matter as per section 135 of the CPA. (ii) Accused fully comprehends what he is faced with: In the matter at hand as per the responses of the appellants and reading through page 1 of the proceeding that the charge sheet was read over to the appellants. (iii) The charge must be fully explained to the accused. (iv) Facts accused must disclose and establish all elements of an offence.
- (v) An accused must plead guilty to each and every ingredient of the offence. (vi) Before a conviction is entered a court must satisfy that facts disclose all elements. The learned State Attorney argued with emphasis that in his considered view all the ingredients handed down by the apex court as per the above case were met. He concluded by praying for the dismissal of the appeal. The first appellant stated that he had not stolen the goats and explained that he was arrested at his home place. He mentioned being taken to the police without any witnesses present and spending the night in the cell before the other appellants were brought in. He claimed that the police had mistreated him, using the term "walinimenya" from his mother tongue the Makua language, and asserted that he said what they wanted him to say. Despite this, he insisted that he had not committed the offense. Page 4 of 9 He then provided additional personal information, stating that he lived in Mangaka with a family consisting of a wife and two children. He worked as a "mchurigi," herding cows for one Jabali Naboto. He emphasized that he had never attended school and had herded cattle for many years, earning a monthly salary of 100,000/=. He asserted that he had never encountered any problems with his boss. The appellant described his routine of taking about 50 cows to Mkeweni area for pastures and bringing them back in the evening. His boss, who was also of Makua ethnicity, went to the police to inquire about his arrest, but the appellant claimed ignorance about the details of the discussion. Importantly, he mentioned

that he had never met the complainant. - / / The second appellant expressed "a prayer for the acceptance of his appeal, emphasizing that they had not committed the offense. He explained that he was arrested in his home place, where he lived with his mother, and highlighted that he was never found with any exhibit. According to him, no witness was brought forward, and he claimed that they were physically assaulted. He asserted that they were coerced into providing false statements because the police threatened that they would face, further consequences if they did not confess. Additionally, he mentioned being new to the court. In terms of personal particulars, the second appellant stated that he was 19 years old and had never attended school. He engaged in a small business, selling drinking water. He mentioned that his parents were alive, but he was living with his divorced mother, and he did not know the whereabouts of his father. He added that he was informed that he is 19 years old by the police, [In my estimation he looked much younger]. The third appellant insisted that he did not commit the offense and explained that he was arrested by the police along with the other appellants. He claimed that they were instructed to confess to stealing the goats. He concluded by expressing a prayer for their release. In terms of personal details, he mentioned that he worked as a peasant. After his father passed away, he inherited cashewnut trees. He noted that he had siblings who depended on him and emphasized that he had never attended school. He described his family as very poor and mentioned that his mother had been sick for most of her life. I have dispassionately considered the records and submissions by both parties. Like the learned State Attorney, I have been unable to discern what complaint the second "ground of appeal intended to convey. To this end, I will confine myself to the first ground namely equivocality of the plea. As alluded to above, Mr. Hurubano energetically and passionately took me through the pages of The Magistrate's Manual and, with equal zeal almost everything he could possibly highlight from the landmark case of MICHAEL ADRIAN CHAKIV. REPUBLIC (Supra). I commend him for his superlative argumentation. Nevertheless, I have subjected his submission to critical scrutiny, and I have a different viewpoint as explained in the next paragraphs. Page 6 of 9 No sooner had the appellants entered the court chambers for hearing of the appeal than I noticed their relatively minority (youthful), appearance, timidity, and perplexity. I must also say that I recognized the name of the purported owner of the stolen livestock as a Magistrate. This increased my interest in examining the whole process that led to the arrest of the appellants. However, since my decision is not based on who the complainant was as such, I reserve my comments on the same to a paragraph or two, as an obiter dictum in the end of this judgement. In the case of Adam v. R. [1973] the erstwhile Court of Appeal for Eastern Africa held that "the danger of conviction on an equivocal plea is obviously grievous where the accused is unrepresented, is of limited education, and does not speak the language of the court" allow the appeal. The trial magistrate should have considered that his fellow bench holder is the complainant. In my opinion, the appellants are not only of limited education (none of them has ever been to school) but also too young to remain firm with whatever amount of torture "kumenywa" they have allegedly undergone through as they described in their native Makua language. Coming back to the complainant, I cannot pretend that I have noticed (arid confirmed) that she is one of our learned

Magistrates for this sub-registry who happens to be a local of the area. To be fair, there is nothing wrong with a magistrate engaging in economic activities such as keeping livestock. However, conviction on plea of guilty may easily send an impression that the learned trial magistrate was avoiding having his fellow magistrate being cross-examined in the witness box. Page 7 of 9 Premised on the above, I allow the appeal. I quash conviction and set aside the sentences. Further, I order that EXEVIA YAKOBO CHIPATE, MESHAKI WAITI MWAKA and HAMISI AMIRI SIPATINI be released from prison forthwith unless they are being held for any other lawful cause. It is so ordered. Court This judgement is delivered under my hand and the seal of this court this 27th day of November 2023 in the presence of Mr. Melchiori Hurubano learned State Attorney for the respondent and the appellant who has appeared in person, unrepresented. E.I. LALTAIKA JUDGE 27.11.2023 Page 8 of 9 Court The right to appeal to the Court of Appeal of Tanzania is fully explained. E.I. LALTAIKA JUDGE 27.11.2023 Page 9 of 9

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