

TANZANIA / JUDGMENT

MATONYA

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IN THE UNITED REPUBLIC OF TANZANIA IN THE HIGH COURT OF TANZANIA IN THE SUB-REGISTRY OF MTWARA AT MTWARA CRIMINAL APPEAL NO. 27176 OF 2024 (Arising from the decision of the District Court of Nanyumbu at Nanyumbu in Criminal Case No. 8 of 2024)
IBRAHIM GAIBU MATONYA..... APPELLANT VERSUS THE
REPUBLIC.....RESPONDENT

JUDGMENT

15* and 2&h November 2024. DING'OHI, J; Ibrahim Gaibu Matonya, the appellant herein was charged before the District Court of Nanyumbu at Nanyumbu (trial court) with the offence of Burglary contrary to section 294 (1) (a) and (2) of the Penal Code Cap 16 RE 2022, and stealing contrary to section 258 (1) and 265 of the Penal Code Cap 16 RE 2022. When the charge sheet was read to him, the appellant is recorded to have pleaded guilty to the charge and accepted as correct all the facts that the prosecution narrated in support of the charge. The learned trial magistrate duly convicted the appellant on all counts and sentenced him to Page 1 of 12 serve ten (10) years imprisonment for the offence of Burglary and three (3) years imprisonment for the offence of Theft. The sentences were ordered to run consecutively. The stolen properties which are a sewing machine and two motor vehicle tires (Exhibit Pl) were ordered to be returned to the owner Gaibu Matonya Naletto. Undaunted by the trial court's finding, the appellant preferred this appeal predicated on four grounds of appeal, namely; /' That, ihe learned trial magistrate erred in both law and fact by considering the plea of guilty was a result of misapprehension or mistake as he did not understand the nature of the plea or offence. ii. Thatf the learned trial magistrate erred in both law and fact by convicting the appellant with regard that even taking into consideration the admitted fact, his piea was imperfect, ambiguous or unfinished. Hi. That, the learned trial magistrate erred in both law and fact by convicting the appellant depending on the appellant's piea of guilty which in nature was equivocally piea of guilty. Page 2 of 12 iv. That, the learned trial magistrate erred in both law and fact by convicting the appellant relying on the exhibit Pl which in fact is not known where it was found. When this appeal came up for hearing, the appellant appeared in person while the respondent Republic was represented by Mr. Edson Laurance Mwapili, learned State Attorney. When the appellant was given time to expound his grounds of appeal, he preferred to hear first from the State Attorney. That he would rejoin thereafter. When accepted to start balling, Mr Mwapili had the view that this appeal has one main issue. The issue is whether the plea made by the appellant in the trial court was an equivocal plea

of guilty or not. In giving force to his stance the learned state attorney considered the trial court's decision to be well-founded. According to him, the accused person who pleads guilty to the charge has no right to appeal against the conviction. The only right which he has is to appeal against the legality or the extent of the sentence imposed on him. That is per the provisions of section 360 (1) of the Criminal Procedure Act. It is Mr Mwapili's submission that the court through different decisions considered the circumstances in which a plea of the accused person may be Page 3 of 12 taken as an unequivocal plea of guilty. To support that the learned state attorney took me to the decision in the case of REX VS FOLDR [1923] 2 KB 400 which was also followed in the cases of Lawrance Mpinga vs R. (1983) TLR 166 and Punda vs Republic (Criminal Appeal 153 of 2005) [2009] TZCA 14. The circumstances are as follows; First: even taking into consideration the admitted facts, his plea is found to be imperfect, ambiguous, or unfinished and, for that reason, the lower court erred in law in treating the plea as a plea of guilt; second, the appellant pleaded guilty in mistake or misapprehension; third, that the charge laid at the appellant's door disclosed no offence known to law; and fourth, that upon the admitted facts he could not in law have been convicted of the offence charged. According to Mr Mwapili, no valid conviction on the plea of guilty may be founded unless these conditions are conjunctively met. The learned State Attorney convinces this court to find that the appellant's plea was not an equivocal plea of guilty as claimed by the appellant. He referred the court to page 1 of the trial court proceedings which indicate that the charge was read over and properly explained to the appellant. The appellant responded to the charge after it was read over and explained to him. The appellant admitted to the facts of the case which could not be possible if he did not Page 4 of 12 understand the contents of the charge sheet. He thus urged this court to dismiss the appeal after a finding that the plea of the appellant was not equivocal. In reply, the appellant shortly submitted that he pleaded guilty after he was heavily beaten up by the police officers. That he was threatened that if would not plead guilty to the charge he would be beaten up on his return to the police station. Considering the weight Of the beatings he received, the appellant says, he decided to plead guilty to the offences charged as a means to serve his life. He insisted in winding up his submission that he did not commit the offences charged. This case was planted by his stepmother, who married his father. He had a dispute with his father over the division of the matrimonial property of her divorced mother. He thus prayed that this appeal be allowed. From these brief submissions by the rival parties, the issue for determination is whether the conviction and sentence, which were founded on the alleged appellant's plea of guilty, were properly grounded. However, before I delve into the above-raised issue it is worth briefly discussing the position of the law regulating appeals of this nature. Page 5 of 12 It is a trite law that no appeal lies where the accused person is convicted on his plea of guilty. The appeal may be expected against the imposed sentence. This is a codified position laid down in section 360 (1) of the Criminal Procedure Act (CPA) and it.states as follows: 'No appeal shall 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 aforesaid position was well emphasized by the Court of Appeal in a plethora of its decisions. For instance, in Juma Hassan Teka vs Republic (Criminal Appeal No. 51 of 2022) [2024] TZCA 464, the Court held that: 'However, as rightly submitted by Mr. Chiputula, we are keenly aware that notwithstanding a conviction

resulting from a plea of guilty, under certain circumstances an appeal arising thereof, may be entertained by an appellate court for both conviction and sentence. These would include situations where the plea was imperfect, ambiguous, or unfinished, appellant pleaded guilty as a result of a mistake or misapprehension, the charge levelled against the appellant disclosed no offence known to law, and Page 6 of 12 upon the admitted facts, the appellant could not in law have been convicted of the offense charged.' From the above-cited extract, I think it is worth to reproduce part of the proceedings to appreciate what actually transpired in the trial court on 4th March 2024. The records show as follows; PROCEEDINGS DATE: 04/03/2024 BEFORE: HON. C.J. David-SRM FOR PROSECUTION: F.9012 D/CPL DEUS ACCUSED PERSON: PRESENTIN PERSON B/CLERK: M.M. Mohamed-RM PROCEEDING SPEECH Prosecution: This is the fresh case, accused person is before this court. We pray to read the charge against the accused person. Accused person: I am ready too. Court: Charge sheet fully read and explained to accused person who is asked to enter a plea thereto; ACCUSED PLEA TO 1st count: Ni kweii niiiunja nyumba ya Gaibu Matonya Naleto saa sita usiku, nffikuwa nataka kuiba vitu ndaniyake. Page? of 12 2* count: Ni kweli nilivunja nyumba usiku wa saa sita, na riHiiba matairi mawiii ya gari na cherehani moja nyeusi. Court: Accused person entered a plea of guilty to both counts of the charge sheet. His plea is unequivocal.' After having recorded the pleas of the appellant as indicated above, the prosecution prayed for the court to read over the facts of the case. After reading the facts that constitute two offences that the appellant was charged with, it was then recorded that; LPP: That is all for the facts your Hon. Court: Facts read and explained to accused person who is asked whether these facts are true and correct. Accused person: Your hon, these facts are true and correct, there is no need to tell the lies or deny them. I admit them all. Court: Accused person admitted the facts to be true and correct. Accused person signed to it.' Subsequently, the trial court proceeded to convict and sentence the appellant as charged. It is a cardinal principle of the law that the conduct of Page 5 of 12 the proceedings during plea-taking is governed by the provisions of section 228 (2) of the CPA which obligates the trial court to record the accused admission of the truthfulness of the charge in as nearly as possible the words that the accused used. The statutory position set out under the mentioned provision of section 228 (2) of the CPA was intricate by the Court of Appeal of Tanzania in the case of Edward s/o Emmanuel Karipei vs Republic (Criminal Appeal No.479 of 2020) [2024] TZCA 334, where the Court quoted with approval the decision in the case of Hyansit Nchimbi v. Republic (Criminal Appeal No.109 Of 2017) [2019] TZCA 251. In the said decision, it was reasoned as follows; 'When a person is charged, the charge and the particulars should be read out to him so far as possible in his own language, but if that is not possible, then in a language which he can speak and understand. The magistrate should then explain to the accused person all the essential ingredients of the offence charged. If the accused then admits all those essential elements, the magistrate should record what the accused has said, as nearly as possible in his own words, and then formally enter a plea of guilty. The magistrate should next ask the prosecutor to state Page 9 of 12 the facts of the alleged offence and, when the statement is complete, should give the accused an opportunity to dispute or explain the facts or to add any relevant facts. If the accused does not agree with the statement of the facts or asserts additional facts which, if true, might raise a question as to his guilt, the magistrate should record a change of plea to "not guilty" and. proceed to hold a trial. If

the accused does not deny the alleged facts in any material respect, the magistrate should record a conviction and proceed to hear any further facts relevant to sentence. The statement of fact and the accused's reply must, of course, be recorded.' My reading of the trial court's proceedings, as reproduced herein above, I agree with Mr. Mwapili that the words of the appellant; Ni kweli nffivunja nyumba ya Gaibu Matonya Naletu saa site usiku, nffikuwa nataka kuiba vitu ndari yake. and Ni kweli nffivunja nyumba usiku wa saa sita, na niffiba matairi mawffi ya garina cherehani moja nyeusi a mounted to a perfect plea. Flowing from this reality, the appellant's contention is, in my view, unfounded. I am of the settled view that the conviction against the appellant was well-founded. I therefore dismiss the appeal against conviction. As to the sentence, there is no dispute, I think, that the offences charged to the Page 10 of 12 appellant do not fall under the Minimum Sentence Act. The maximum sentence is 20 years imprisonment. In sentencing, the trial court sentenced the appellant who is recorded to have not made mitigation, to 10 years and 3 years respectively. He was so sentenced because also that he did not apologize to his father, the PwL. The failure of the accused person to apologize or failure to mitigate the sentence is not a ground for imposing a high sentence. Under the circumstances of this case, I think the imposed sentence is unnecessarily high and/or excessive. In a case like this which the appellant has admitted to having stolen the property of his father and being the first offender, he deserved lenience. I would sentence the appellant to Three and one year (s) imprisonment respectively which would run concurrently. Based on that the appellant's sentences are therefore reduced to that extent, accordingly. Save for the variation of sentences, the appeal is otherwise dismissed. DATED at MTWARA this 26th day of November 2024. Page 11 of 12 COURT: Judgment delivered this 26th day of November, 2024 in the presence of Mr. Edson Laurence Mwapili, the learned State Attorney, and the appellant who appeared in person. S.RTDING'OHI JUDGE 26/11/2024 Page 12 of 12

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