

TANZANIA / JUDGMENT

kakoro nassan bisangwa vs james pankras

katatumba 2021 tzhc 3386 31 may 2021

COURT
TZHCDECIDED
31 May 2021

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA (IN THE DISTRICT REGISTRY OF BUKOBA) AT BUKOBA PC CRIMINAL APPEAL No. 27 of 2020 {Arising from the District Court of Bukoba at Bukoba in Criminal Appeal No. 7 of 2020 & original from Kyaka Primary Court in Criminal Case No. 28 of 2018} KAKORO NASSAN @ BISANGWA -----APPELLANT
Versus JAMES PANKRAS@ KATATUMBA -----RESPONDENT

JUDGMENT

26.05.2021 & 31.05.2021 Mtulya, J.: On 23rd January 2020, a charge of cow stealing contrary to section 268 (1) of the Penal Code [Cap. 16 R.E 2019] (the Code) was read before Mr. Kakoro Nassan @ Bisangwa (the Appellant) at Kyaka Primary Court (the primary court) based in Missenyi District in Criminal Case No. 28 of 2020 (the case). At page 1 of the typed proceedings, the Appellant, after the charge was read against him, he pleaded guilty in the following words: ni kweli. When the facts of the case, which constituted the offence of cow theft contrary to the mentioned law, were read over to the Appellant, he admitted at page 2 of the typed proceedings by use of the following words: Ni kwe/i ng'ombe niliwape/eka nikawapakia kwenye fuso. Following that plea, the primary court convicted the Appellant 1 and sentenced him to five (5) years imprisonment. The Appellant was not satisfied with the decision of the primary court in the case hence preferred Criminal Appeal No. 7 of 2020 before the District Court of Bukoba at Bukoba contending, apart from other issues that, the plea was not unequivocal and cited the authority in Laurence Mpiga v. Republic [1983] TLR 166. The District Court dismissed the appeal and at page 5 of the judgment held that the plea was unequivocal as the offence was disclosed in the Charge Sheet. The reasoning of the District Court as is found at the same page shows that: the offence was on cattle theft contrary to section 268 of the Penal Code. When the facts of the case were read the accused admitted them. The plea is the truth and did not prejudice the accused person. Finally, the District Court cited the authority in Alfani Mlaponi & Another v. Republic [1990] TLR 105 to substantiate its stand. The Appellant was not satisfied with the decision of the District Court hence knocked the doors of this court, apart from other prayers, he was praying for examination of his plea on whether it was unequivocal. The Appellant in ground number 4 of his

petition of appeal contended that the District Court erred in law in holding that the plea was unequivocal. When the appeal was scheduled for hearing, the Appellant, as a lay person had nothing to submit, but 2 . . claimed the Respondent had fabricated evidence to make him responsible for the offence and prayed this court to do justice to the parties. The Respondent on the other hand had invited the legal services of Mr. Lameck John Erasto who after scrutinizing the record of this appeal, he conceded ground number four of the appeal stating that the Appellant admitted to have taken and loaded the cows into Fuso vehicle in the following words: niliwapeleka nikawapakia kwenye fuso. According to Mr. Lameck, the utterances or plea does not reflect the offence of cattle theft as charged. To his opinion, the primary court was supposed to call witnesses to substantiate the alleged offence as per directives of courts of record. Finally, Mr. Lameck prayed this court to quash all orders and set aside proceedings in both courts below and order retrial for proper administration of justice. It is fortunate that the record is clear on the dispute and this appeal was supported by officer of the court Mr. Lameck. On my part, I think there is precedent of the Court of Appeal in Hyasint Nchimbi

- v. Republic, Criminal Appeal No. 109 of 2017, where the Appellant was convicted of Robbery contrary to section 287 A of the Code in the District Court of Mbinga at Mbinga on his own plea of guilty where his plea depicted that: ni kweli pikipiki niliiba. 3
- ----- In its well-considered decision, the Court of Appeal held that ni kweli pikipiki niliiba could not be plea of guilty to the charge of armed robbery, but a plea of a charge of simple theft which was not a charge laid before the appellant. In the present appeal, it is not clear whether the whether the Appellant's plea was in relation to the charged offence of cow theft which was laid against him or other offences. In such circumstances, it cannot be said that the Appellant's plea was unequivocal, when he did not plead all elements of the charged offence (see: Deus Gendo
- v. Republic, Criminal Appeal No.480 of 2015). In the present appeal, the plea may be termed ambiguous or unfinished as per precedent in Laurence Mpinga v. Republic [1983] TLR 166. The most quoted paragraph on subject is found in precedents delivered by our superior court in Hyasint Nchimbi v. Republic (supra) and Khalid Athumani v. Republic, Criminal Appeal No. 103 of 2005, that: The long paragraph from Adan v. Republic (1973) EA 445, will serve the purpose: '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 4 . . ----- 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 formerly enter the plea of guilty. The magistrate should next ask the prosecutor to state the facts of the alleged offence and, when the statement is complete, should give the accused opportunity to dispute or explain the facts or to add any relevant facts. If the accused does not agree with the statement of facts or asserts additional facts which, if true, might raise a question as to his guilty, the magistrate should record a charge of plea of 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 facts and accused's reply must, of course, be recorded~ As this long paragraph provides it all, and specifically recognized in our superior court in judicial hierarchy, this court would not dare to add any statement. Before I conclude this judgment, I may wish to express my feeling indebted to Mr. Lameck's humble submission. He perused the record of this appeal and after short conversations during 5 . . ----- . . ----- .. ~ a the hearing of the appeal, he supported the appeal. He acted as an officer of this court and cherished enactment in section 66 of the Advocates Act [Cap. 341 R. E. 2019]. Having said so and considering the plea of the Appellant was confusing, and does not relate to the offence charged, I quash the conviction, and set aside the sentence for want of unequivocal plea. I again order expeditious retrial before another magistrate with different pair of assessors. The case to be determine to the finality within six (6) months' time from the date of this judgment, and at the end of the trial, if the Appellant is found guilty and convicted, the period which he so far served in prison custody may be considered in sentencing . In mean time, the Appellant shall continue to be in remand custody to await the said retrial. It is accordingly ordered . . Judge 31.05.2021 6 . . ----- . . ----- .. ~ This Judgment was delivered in Chambers under the seal of this court in the presence of the Appellant Mr. Kakoro Nassan @ Bisangwa and in the presence of the Respondent, Mr. James Pankras @ Katatumba and his learned counsel Mr. Lameck Erasto John. Judge 31.05.2021 7

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