

DECIDED
24 April 2015

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- appeared for. the respondent, the Republic. The appellant filed three grounds of appeal, but essentially the appellant is challenging his conviction on the basis of insanity. That his conviction was meted without prior assessments of his mental state. On 25 th March, 2015 when this appeal came for hearing before this court, the appellant was unable to submit on any ground or assist this court in any manner because he appeared to be mentally unstable. . . . 1 . . . , :•• The prison officer who \,was, guaraing the appellant intimated 2 -- •• -- I', • . . : • ' \ • I • t • : • • . , t ' , : ; 1 : , ~ / ~ , - t t : • ' ; • . . : • ; • • ; , - t • , , r . . , : • - - , , . . • \ : : • • ~ , : ; , ~ ~ ~ - - ~ - - ' ; : ~) , , ; y , ! , , }

- . , I , .. - ; : : to : thi. s court , th.a~ t~e __appel!a~t has_ been a, n1~E; ~n~e a_r)d
r:nent~HY.~~ ~ ... ••' <! : • unsound :sioc.ethe.date ~he. w.as adrntted,Ln ·p~J?p.n.
_, . : . , . - : . : . : . ' , . ' ' . ' ' . • . M\$~, -Ka.ssana Maziku, learned Stat.e Attorney
submitted in ~ , -· (c •••• support of the appeal by high_lighting the short~omings that
will .. ' ••••• , ; : r, ••••• require the intervention. of this court. She submitted that having ',
C O •••' gone through . the record of proceedi.ngs of the trial District Court· . . . and
_having: ·considered the appellant's grounds of app~al together,. . . . - . with the conducts
of ~he app_ellant in court she is of the view that · . . t~e appellant is· mentally disturbed. She
stated that, in convi~ting- ·
- . . , the -appellant the trial court did .so_ without ascertaining the appellant's mental status
during and after the commission of the offence. ~ As . a result the accused pleaded guilty
without knowing . . what he· was actually sayfng. · Ms. Maziku asked this court to ·allow_
the appeal and order the case to be tried de-nova _in accordance with the procedure
pertaining to an accused person who is mentally sick. Ms. Maziku further submitted to the
effect that ev~n the facts which were adduced by the prosecution to support the offence
were not sufficient to establish the serious offence of armed robbery meaning that the
alleged stolen items were not mentioned in the facts and the alleged caution ,statement of
he accused was not produced in court. ' This court is quite aware of Section 360 (1) of the
Criminal Procedure .Act, Cap. 20 which provide tha~ no appeal shall be .- ft,
- . aHowec{ in the -case of any ac·cused person whO"has pleaded ·guilty '"/. ; ~ .• l,- ••• 3 ~
'-/;/ ' ; : ~; ~, .. anc_j .has been. convicte.d on such plea by a subord!nat'e .court ~ . . . •' '-
:.. ; , . ~ . . . ! , < : , - , , , . , . excep_t-as .to the extent or .legaiity of. the
sent'ence. t-iO\Nev:e:r, th{~::~;::: _ : . . . : •••' ! , ' •' . , . . - " : _ . ~ . : _ . ' .
' . ; .. • . • ; ; ~ : .l - : . . law. allows, . under . certain 'circunstances . . . - to entertain ail .
appear , , . hotwit.h,st,anding a ple2a 9f guilty. In the case of Rex V. ·Forde . (i923). 2 K-B..
400 ·which ·was ·also quoted· in the case of Khalid ..A1;l,~m,~n;s~::~_t{~~~~:(2006) TLR, it
~as held that; ~ , ; : . : ' . : ~ . . , ••••• e ••••• _; .. , . . "A.· ple;;r of guilty having been
recorded, this court '!' ~ -' · can .: pn_ly. entertain an appeal agains.t. conviction if it
. : clpp~fs;i~fi1/;::~at .the .appellant .did not ·appreciate the . : . natiir~)~i)thl~ha;~ or
did not intend to acirnit he was .· ~u;jit:v:}liiiYt of (2) that, upon. the adm:itted facts he ..
could··h~/;:lr/•liiw· ·iiave been ~onvicted of the offence . . . 11',.. ••_:. - -
- . , ::: 1 ~f'. 4, ~- . : " . . charged . , , , . - . : ~' - . • . : ! : \~t;1:->; : : . . , , . - , - _ . /"
,... : !' :\ : R-:\ *t:::~ : ~ _ . ~ . . ~ ~ - : • : ~ ~ .. ~ !' ,... : : , - _ . : : . : : . .
'i , . . , : : , : : . .
- . -
- : ~; , . . ~h:e2:J;j,p\$}tiori of the lavv .is that an accused person can not be . , . , ~ ..
./! ;;<:{~::~~::~;:/ ~:- -; . : . . -..... ~ . - taken.to.Jla|te admitted· an offence unless
he pleads guilty to it· in · unmistakable terms with appreciation of the essential elen1ents of
· the offence for which he stands trial. This position is even more strong in trials where the
ac(:used is unrepresented by an advocate and ,where the mental status of the accused

person is - questionable like in the present appeal. In a plea of guilty the accused must understand all essential elements of the offence and must be in full command of his mental faculties. In this appeal the appellant who appears mentally unstable pleaded guilty but insisted that he was visited by Jesus Christ who warned 4 --,r •,I';, .. - _.:

• . :.~ , r . ; - • , ~ ' , ' ; ~ : . # , ~ . - " } , : , ; . --- ~ , . , ; ; ~ .. _ . - ..

- ~. ' < " , . • ' . £ . • . t . . • , . i • , ; , . : • -- _ : - _ hJ111. 11qt to: _co.mrn_It offe_;lce .anyrnOre .. The - circUmstances_o(this., . ; , '~"~• • , , ; ; : \ _ • , p .. ~ ~ : ~ : ? - _i • : • , : • : , ' • : ' - ' - _ • ~ .. _ ~ , . ' : • • • • : _ : • : ' : 0 . " _ • , : _ , • , : • C . • , • • • , , , • 0 SL • " " • • , ~ , • ' 0 • case indi_cate_'th_at. a pe, ~ son' -- iri tve • status and appe~rance of th'e -- _ • • - • • -

- 0 , • _ ' , . " ; • : • • " ! " . • • , • • • • • , • ' 0 ~ ' • • , ; • • • • ; • ~ • • • • • " • r • > (t • c • • • 0 .. appellant_ could not_ understand all • essential elements of the ' • • t 1 ~ , , . I • , " , , • : _ , • • • ~ ' , , , • • • • f to • , , , ' 1 , • • C ' • ' ' ' • • \ seri_ou; , . oJfence of ar_n:ted_ robbery laJd. against: him or. p~ss~ssed ~uffl~'i-e~t- m~ta-1.status to- ~-ppred~te t~~}riai. i-: 1 -- In the. case of • Venanti - Apornary Vs. The Republic, Criminal ~ppeal No. • 41 of iOOS CAT, at Mwanza (unreported), ' while . citing .the case of • Hi'lda Abel . Vs ..Republic • . , . ~ . (1993') TLR~ the court observed; i:, • , , .. • ~ "Insanity within the context of Section 13 of the Penal Code is a question of fact which could be inferred 'from the circumstances of the case and th~ conduct of the person at the material t:ime.11 The_ circumstances of this case and the conducts of the appellant, evidently invites the employment of the provisions• of the law relating to ins_anity against the appellant to ascertain his mental status before conviction and p_unishment. In addition, as stated by Ms. Mziku, even the alleged admitted facts could not in law constituted the alleged offence. I therefore, totally a~d completely agree with Ms. Maz_iku . . that_ the appellant plea was not_ JJ~equivq<:al P,1~9-of"~l~!Jt'f: ,Jn the • • • , J • . • • : • - r r • , r ~ ~ , • ' ; , ; . • - ~ • , : - ' • . • , _ , • • • • • ~ i : _ " ; ' " _ -re-sulf • the • • appeal is' hereby allowed; conviction-' arid • sentence I; • , . ~ ~ - 5

- " ...,I':. , , _ - . - : . . .

- • ; • ~ ~ .. • • • • • p • • . • _ 7:..... ~ . ; ~ ~ . f I • . (a . qt.1a_sl;ed ..ahd.:set as_i.ue,:..The discretion to start the case de:-ndvo.-• • , . . . - agclinst...the appellant: is ..upon-. the Director of Public Prosecutions. • • -• ... • • (, - , ; ; : : • : • : , • . - _ , • • • - . ' 1 .. It is so ruled.- • : . . Mean.while, the appellant is to be released from prison and set free unless ,he is other~√ ise layvfully held. on ~nother matter. • :It is so ordered. ~- S. SHAN~Al,I . . JUDGE . 24/4/2015 Judgement delivered in the presences of Ms. H. Masambo, . .w lear.ned State Attorney _- for • the respondent/Republic and the accused present in person. M. S. SHANGALI JUDGE 24/4/2015 . 6 M. S. SHANGALI JUDGE 24/6/2014 • • 7 ~ " - . i ! - r - - • r - t; r-

- ... , ~ ,

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