

TANZANIA / JUDGMENT

malando robert elisha moses v the republic 2024 tzhc 306 19 february 2024

COURT
TZHCDECIDED
19 February 2024

Source: media.tanzlii.org · Research copy typeset by Esheria. Not court-issued or certified.

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA (TABORA DISTRICT REGISTRY)
ATTABORA DC. CRIMINAL APPEAL NO. 42 OF 2023 (From the decision of the District Court
bfKaliua in Criminal Case No. 110 of 2021, before Hon. A.E. Chilongola, RM) MALANDO
ROBERT 1st APPELLANT ELISHA MOSES 2nd
APPELLANT VERSUS THE REPUBLIC..... RESPONDENT

JUDGMENT

Date of Last Order: 20/11/2023 Date of Judgment: 19/02/2024 KADILU, J. The appellants herein were sentenced to thirty (30) years imprisonment by the District Court of Kaliua at Kaliua, after pleading guilty to the charge of armed robbery allegedly committed on the 1st day of August 2021 during night hours at Mpanda Mlowoka Village within Kaliua District in Tabora Region. The prosecution alleges that the duo stole cash from TZS. 100,000/= and a mobile phone make TECHNO valued at TZS. 60,000/= the property of Salmon Tito and immediately, during and after the stealing, they used panga against Saimon to obtain the said properties. When the charge was read over and explained to the appellants, they pleaded guilty, which moved the trial court to invite the prosecution to read out the facts substantiating the offence. The prosecutor read out the facts of the case and tendered exhibits to corroborate the commission of the offence by the appellants. These were, TZS. 100,000/=, (exhibit P1); a mobile phone (exhibit P2), one panga (exhibit P3); sketch map of the scene of the crime (exhibit P4); extrajudicial statement of the second appellant (exhibit P5-) and cautioned statements of the appellants (exhibit P6). After the appellants were asked by the trial Resident Magistrate, if they were admitting the facts which substantiated the charge read over to them, they willingly and in no uncertain terms stated that, they were correct and true. When the prosecutor prayed to tender the exhibits, the learned Magistrate asked the appellants if they had any objection and they replied that they had none. On the strength of the unequivocal pleas of guilty by the appellants on the charge and the facts of the case read over to them, the Magistrate convicted the appellants as charged and sentenced them to the statutory sentence as hinted above. The appellants are now challenging the convictions and sentences meted out to them premising their grievance on five grounds which read: -

1. That, the case for the prosecution was not proved against the appellants beyond reasonable doubt as required by the law:
2. That, the alleged plea of guilty by the appellants Was ambiguous and equivocal.
3. That, the proceedings do not contain the reply of the appellants' actual words.
4. That, the learned trial Magistrate erred in law and facts to allow the prosecutor to read the facts of the Case under Section 192 (3) of the Criminal Procedure Act which carters for accused persons who have pleaded not guilty.
5. That, failure to read aloud the sketch map of the scene of the crime, extrajudicial statements, and cautioned statements allegedly of the appellants, affected the plea of guilty. They implored this court to allow the appeal, quash the conviction, set aside the sentences, and order their release from prison custody. On the date when the appeal was called on for hearing, the appellants were unrepresented, whereas the respondent/Republic had the able services of Ms. Tunosye Luketa, Ms. Suzan Barnabas, and Mr. Steven Mnzava, all learned State Attorneys. The appellants requested the learned State Attorney to submit first to help them grasp the substance of their grounds of appeal. In addition, the second appellant informed the court that the first appellant would submit on the grounds of appeal on behalf of both of them. Ms. Tunosye, in addressing the court on the first ground of appeal, argued that since the appellants were convicted based on their plea of guilty, they cannot complain that the case against them was not proved beyond reasonable doubt. She explained that after the appellants admitted that they robbed money by using a machete, the trial Magistrate was justified in convicting them under Section 228 of the CPA. Concerning the second ground of appeal, the learned State Attorney stated that the appellants' plea of guilty had no ambiguity as they responded clearly that they committed the charged offence. She added that the appellants admitted all the facts constituting the offence and signed. 3 About the third ground of appeal, Ms. Tunosye submitted that it is not true that the proceedings do not contain the appellants' own words in their pleas of guilty. She explained that the Hon. Magistrate recorded the same words used by each appellant. About the allegation that the trial Magistrate invoked the provisions of Section 192 of the CPA while the appellants pleaded guilty, Ms. Tunosye opined that there was no harm in doing so as the purpose was to establish the facts admitted by the appellants. Finally, the learned State Attorney submitted that it is not true that an omission to read aloud the exhibits after the admission affected the plea of guilty because the exhibits supported the facts already admitted by the appellants. Responding to the submission by the learned State Attorney, the first appellant informed the court that maybe they pleaded guilty to the charge without: knowing what they were doing because they were beaten and the police intimidated that they would finish the appellants if they refused to plead guilty. He added that the alleged cautioned statements do not belong to them because they found them at the court where they were forced to sign. On the rest of the grounds of appeal, the first appellant said he could not explain about them as he did not know the law. He prayed for the court to allow the appeal. There is only one crucial issue that calls for determination in the instant appeal, which is whether the pleas which were

entered by the appellants to the charge which was read over to them, were unequivocal. To begin with, I reproduce verbatim, the provisions of section 228 (1) and (2) of the CPA 4 that deal with pleas, which I think, are relevant to the determination of the appeal. They read: - "(1) The substance of the charge shall be stated to the accused person by the court, and he shall be asked whether he admits or denies the truth of the charge. (2) If the accused person admits the truth of the charge, his admission shall be recorded as nearly as possible in the words he uses and the magistrate shall convict him and pass sentence upon or make an order against him; unless there appears to be sufficient cause to the contrary." What transpired in the trial court that culminated in the instant appeal is well indicated on the original record of the court which I reproduce hereunder: ~ Court: Charge read over and explained to the accused persons who are asked to plead thereto; 1st Accused: It is true. We robbed money from the said person by using panga. 1st accused signed... Signed: A.E. Chiiongola - SRM 6/8/2021. 2nd Accused: It is true we robbed money and mobile phone from the said person by using panga. 2nd accused signed... Signed: A.E. Chiiongola - SRM 6/8/2021. 5 Court: Entered a plea of guilty to the charge for both accused persons. Signed: A.E. Chiongola — SRM 6/8/2021. After having recorded the pleas of the appellants as indicated above, the trial Resident Magistrate invited the prosecutor to narrate the facts of the case which went as follows- - Prosecutor:

1. The accused persons are two, Malando Robert and Elisha Moses. - Admitted.
2. The accused persons are charged with one offence of armed robbery. - Admitted.
3. The accused persons committed this offence on 2/8/2021 at about night hours in Mpanda Miowoka, within Kaiiua District in Tabora Region. - Admitted.
4. Wherein the accused persons did steal TZS. 100,000/= as cash and one mobile phone make TECNO valued at TZS. 60,000/=. -Admitted.
5. The accused had panga and stick at the time of committing the said offence. - Admitted.
6. The accused persons injured the victim at his hand by using panga to threaten him. - Admitted.
7. The accused persons were arrested by the Sungusungu of Mpanda Miowoka after they had committed the offence. - Admitted.
8. The accused persons were found with Tshs—100,000/= and one mobile phone that was stolen from the victim. - Admitted.
9. Accused persons were brought to Kailua Police Station for interrogation. -Admitted.
10. The accused confessed to having committed the offence when interrogated. - Admitted.
11. The accused confessed before the Justice of the Peace when interrogated thereat. - Admitted. 6

12. The accused persons were brought before the court after the completion of the investigation. - Admitted. Court: The facts containing the substance of the offence charged read over and explained to the accused persons who admitted being true and correctly recorded in paragraphs 1,2,3,4,5,6,7,8,9/10,11 and 12, also undertake to sign. Signatures: 1st accused: Signed... 2nd accused: Signed... P.P.: Signed... Signed: A.E. Chiongoia — SRM 6/8/2021. Court: Section 192 (3) of the CPA, Cap. 20 R.E. 2019 complied with. Signed: A.E. Chdongola - SRM 6/8/2021. P.P: I pray to tender cash Tshs. 100,000/= found with the accused persons, one mobile phone make TECNO, one machete (panga), sketch map, extrajudicial statement of Elisha Moses, and cautioned statements of both accused persons as exhibits. 1st Accused: No objection. 2nd Accused: No objection. Court: Tshs. 100,000/=: one mobile phone make TECNO, one panga, sketch map, extrajudicial statement of Elisha Moses, and cautioned statements of both accused persons are admitted as exhibits P1, P2, P3, P4, P5, and P6 in this case. 7 Signed: A.E. Chilongola — SRM 6/8/2021. Court Finding: Considering that the accused persons pleaded guilty to the charge when the charge was read over and explained to them, admitted the facts containing the substance of the offence charged to be true and correctly recorded in paragraphs 1,2,3,4,5,6,7,8,9/10,11, and 12 and signed, also had no objection to the admission of the exhibits tendered by the prosecution side which support the occurrence of the said event, their plea is unequivocal and based on their plea, the accused persons are convicted of the offence of armed robbery c/s 287A Of the Penal Code, Cap. 16 R.E.2019 and Section 228(2) of the CPA, Cap. 20 R.E. 2019. Signed: A.E. Chilongola - SRM 6/8/2021. Thereafter, the learned trial Resident Magistrate proceeded to hear the previous criminal record of the appellants and their mitigating factors, then she sentenced them accordingly. Given the facts borne out from the proceedings as shown above, what I had to ask myself is whether, under the circumstances, it could be said that there was any ambiguity, vagueness, or misapprehension in the pleas entered by the appellants to the offence which they stood charged with. My answer after having closely considered the record, is in the negative. I am positive that the pleas by the appellants were unequivocal and that, no appeal lay to this court. Section 360 (1) of the CPA, [Cap. 20 R.E. 2022] 8 stipulates that an appeal shall not 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. In the instant matter, the appellants have appealed against the conviction and sentence even though they pleaded guilty to the charge. The circumstances which can entitle an accused person to challenge a conviction which was based on a plea of guilty were stated in Laurence Mpinga vR., [1983] TLR 166, and Josephat James vR., Criminal Appeal No. 316 of 2010 where it was held that: - ■'An accused person who has been convicted by any court of an offence on his own plea of guilty may appeal against the conviction to a higher court on any of the following grounds:
1. that, even taking into consideration the admitted facts, his plea was imperfect, ambiguous, or unfinished and, for that reason, the lower court erred in law in treating it as a plea of guilty; 2. that he pleaded guilty as a result of mistake or misapprehension; 3. that the charge laid at his door disclosed no offence known to law; and 4. that upon the admitted

facts he could not in law have been convicted of the offence charged." The appellants told this court during the hearing of the appeal that they pleaded guilty unknowingly because they were beaten by the police. However, the record is completely silent about this allegation being disclosed to the court when the appellants were called to plead. Moreover, when they were taken to the Justice of the Peace, the appellants did not inform her that they were beaten by the police. In addition, when the appellants' cautioned statements and extrajudicial statement of the second appellant were tendered, the court asked them if they had an objection and they replied in negative. Therefore, raising the allegation of torture at this stage is an afterthought or rather the last kicks of a dying horse. My examination of the pleas that were entered by the appellants to the charge which was read over to them as well as their responses to the facts of the case when they were narrated to them, assure me that they clearly understood the nature of the charge against them and that is why, their responses were even more detailed than what was contained in the charge sheet. I am satisfied that there was no way in which there could be a question of imperfectness, ambiguity, or misapprehension as the appellants' pleas were unequivocal. About the complaint by the appellants that the exhibits tendered in evidence were not read aloud to them, I find it to be unfounded because tendering of exhibits where conviction is based on a plea of guilty is not a legal requirement. In the case of *Matia Barua vR.*, Criminal Appeal No. 105 of 2015, the Court of Appeal held that tendering an exhibit be it an object or a document after an accused person has pleaded guilty to the charged offence, is not a legal requirement though it is desirable to do so. For this reason, I hold that in the circumstances of this case, an Omission to read out the exhibits was not fatal as it did not prejudice the appellants in any way. The other complaint by the appellants is that the prosecution did not prove the case against them beyond reasonable doubt. As hinted earlier, where the accused person pleads guilty to the charged offence, the prosecution is not required to present any evidence to prove the charge. Section 228 (2) of the CPA is clear that where the accused person admits the truth of the charge, the Magistrate should convict him and pass sentence upon or make an order against him. This is also the legal requirement under Section 282 of the CPA. Additionally, the appellants assert that the proceedings of the trial court do not reveal the exact words used by them in pleading guilty. On this point, Section 228 (2) of the CPA requires the accused person's admission to be recorded as nearly as possible in the words he uses. In my view, statements like, "It is true, we robbed money and mobile phone by using panga" feature in the proceedings satisfy the requirement of Section 228 (2) of the CPA. The appellants did not tell the court that they uttered other words capable of different connotations from what was recorded by the trial Magistrate. That is why the appellants had signed their pleas without intimating to the court that the words recorded were not exactly the ones they uttered. ii Lastly, the appellants lament that the trial Magistrate allowed the prosecution to narrate the facts under Section 192 of the CPA. I have examined the records of the trial court and failed to trace the alleged permission by the trial court. Before the prosecutor had read out the facts, the proceedings went like this: "P.P: We are ready to adduce the facts." He then narrated the facts and, in the end, the Magistrate stated clearly that the facts that were read over and explained to the accused persons were the ones

containing the substance of the offence charged. In that regard, I did not find out how the narrated facts fatally affected the appellants' pleas of guilty making the trial court's decision open for appeal. That said and done, I find the appeal by the appellants devoid of merit and dismiss it in its entirety. Order accordingly. MJ. JUDGE 19/02/2024. Judgment delivered in chamber on the 19th Day of February, 2024 in the presence of the appellants and Ms. Tunosye Luketa and Suzan Barnabas, State Attorneys for the Respondent. DILU, M.J., JUDGE / 19/02/2024. 12

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE https://media.tanzlii.org/media/judgment/308335/source_file/malando-robert-elisha-moses-v-the-republic-2024-tzhc-306-19-february-2024.pdf

CASE PAGE <https://chat.esheria.ai/case-law/tanzania/malando-robert-v-the-republic-pleaofguilty-tzhc-2024>

Prepared on 14 October 2026 · Esheria