

TANZANIA / JUDGMENT

mohamed abdullahi muhidini vs republic 2022 tzhc 12789 31 august 2022

COURT
TZHCDECIDED
31 August 2022

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA (DODOMA DISTRICT
REGISTRY) AT DODOMA DC CRIMINAL APPEAL NO. 44 OF 2022 (Originating from Criminal Case
No. 22 of 2022 Resident Magistrate Court of Dodoma at Dodoma) MOHAMED ABDULLAHI
MUHIDINI..... APPELLANT VERSUS THE REPUBLIC.....
RESPONDENT 18/8/2022 & 31/8/2022

JUDGMENT

MASAJU, J The Appellant, Mohamed Abdullahi Muhidini, was tried and convicted of the offence of Facilitating Smuggling of Immigrant into the United Republic of Tanzania contrary to section 46 (1) (e) of the Immigration Act [Cap 54 R.E 2016] in the Resident Magistrates' Court of Dodoma at Dodoma on his own plea of guilty. He was sentenced to pay fine of TZS 20,000,000/= or in default thereof to serve twenty (20) years imprisonment. Aggrieved by the decision, the Appellant has come to the Court by way of an appeal. His Petition of Appeal is made up of three (3) grounds of appeal essentially challenging the plea of guilty entered by him that it was equivocal. i When the appeal was heard in the Court on the 18th day of August, 2022 the Appellant was represented by Ms. Holiness Mwakanosya, the learned counsel while the Respondent Republic was represented by Mr. Salum Matibu and Mr. Geoffrey Mlagala, the learned State Attorneys. The Appellant through the service of his learned counsel abandoned the 2nd ground of appeal and argued on the 1st and 3rd grounds of appeal that, although he was convicted of the offence on his own plea of guilty the plea was equivocal because the Appellant being a Somali with Lesotho citizenship, the trial court was duty bound to provide him with interpretation services. That, the plea was equivocal because the language used was English without the trial court satisfying with his fluency in that particular language, because the law provides that a charge has to be read over to the accused in language he understands as per section 211 (1) of the Criminal Procedure Act [Cap 20]. That, the case against the Appellant was a criminal case but in the record of proceedings it is referred to as an economic case. So it was not certain as to which facts and the offence the Appellant entered plea of guilty thereof. That, in the charge sheet on the particulars of the 1st count against the Appellant the words "South Africa" was crossed and in //er/thereof there was a handwritten word "Zambia". That, the proceedings does not reflect if the said amendments were made by the Respondent upon leave of the trial court or by the trial court itself "suo mott'd". 2

That, the plea was therefore equivocal as per Kigundu Francis and Jackson Mussa V. The Republic (CAT) Criminal Appeal No. 314 of 2010, Mwanza Registry. The Appellant prayed the Court to allow the appeal, quash and set aside conviction and sentence respectively and set the Appellant free. The Respondent Republic supported the appeal by submitting that the word "facilitator" has not been clearly elaborated by evidence of particulars thereof as to how the Appellant facilitated smuggling thereof in the absence of say, exhibits such as bus fare and tickets, cost for food, accommodation e.t.c paid by him for the other person whom the Appellant allegedly was smuggling to Zambia. There was no cautioned statement made by the Appellant upon interrogation which was admitted in evidence. That, the same, if any, could have shed some light on how the Appellant did the facilitate the alleged smuggling. That, the proceedings against the Appellant were conducted in English without there being evidence of his fluency in English. That, the facts did not reveal the section of law the Appellant violated. That, the facts adduced by the prosecution do not constitute the offence allegedly committed by the Appellant. The Respondent further argued that in the facts of the case adduced by the prosecution there was the word "revealed". That, there was no source of the said "revelation". The Appellant's cautioned statement, if any, could have been the revelation but the same was not tendered in the trial court. That, it was also "revealed" that the Appellant was accompanied by the 2nd & 3rd accused. That, accompanying someone is not illegal. So if it was an illegal company the facts could have so stated. Lastly, the Respondent submitted that the word smuggling was not so explained to the Appellant in accordance with section 228 of the Criminal Procedure Act [Cap 20] because the word smuggle does not necessarily mean smuggling of human being only. The Court appreciates the submissions in support of the appeal by the parties. The courts are empowered by section 211 of the Criminal Procedure Act [Cap 20] to arrange for an interpreter to translate the proceedings or evidence for the accused persons or from witnesses who do not understand the language of the court (Swahili or English) for administration of justice and fair trial. In the instant case the charge sheet is clear on the citizenship of the Appellant hence the trial court ought to have inquired the Appellant as to whether or not he did understand the language of the court, and if not arrange for an interpreter for translation but this was not done. The irregularity is fatal since it affects the alleged plea of guilty by the Appellant. Since there is doubt on whether or not the Appellant understood and was aware of the charge he was facing and the facts thereto, thus equivocal plea as so rightly submitted by the parties. The facts of the case are also not clear on who had revealed the information to the immigration officers, that the Appellant had committed the alleged crime. The charge sheet is also questionable on the particulars of the 1st count against the Appellant since the typed charge sheet alleges the Appellant had facilitated smuggling of an immigrant to South Africa but 4 'the same is crossed and hand written Zambia as the facts also so reveals with no reflection on the trial court's proceedings as to whether the prosecution had amended the charge sheet. This is also a serious irregularity vitiating the proceedings of the trial court as to the alleged plea of guilty by the Appellant. The charge against the Appellant was defective because there was variance between the statement of the offence and the particulars of the offence thereto. The offence "FACILITATES SMUGGLING OF IMMIGRANT INTO THE UNITED REPUBLIC OF TANZANIA contrary to section 46 (1) (e) of the Tanzania Immigration Act, [Cap 54 RE 2016] (sic) but the particulars of offence thereof were "MOHAMED ABDULLAHI MUHUDINI

citizen of Lesotho, on 23d day of May, 2022 at Mipango bus stand, within the District of Dodoma in Dodoma Region was found facilitating the smuggling of immigrant one KIBOMO FIKIRE TIROORE a citizen of Ethiopia through the United Republic of Tanzania on the way to foreign country Seuth-Africa Zambia' Section 46 (1) (e) of the Immigration Act, [Cap 54 RE 2016] reads thus; "46 (1) A person who-

- (e) facilitates in any way the smuggling of immigrants into the United Republic of Tanzania or to a foreign country. Commits an offence and on conviction, is liable to a fine of not less than twenty million shillings or imprisonment for a term of twenty years". 5 So the variance between the statement of offence and the particulars of the offence thereof are obvious. That being the case, a defective charge the Appellant allegedly pleaded guilty to and convicted of the offence on his own plea guilty can not be the basis of the alleged unequivocal plea of guilty. The conviction and sentence emanating from a defective charge against the Appellant cannot therefore be maintained by the Court. The Appellant was therefore wrongly convicted of the offence on equivocal plea of guilty as so rightly argued by the parties. Thus, the meritorious Appeal is hereby allowed. The conviction, sentence and order thereof against the Appellant are hereby quashed and set aside accordingly. The Appellant shall be released forthwith from prison unless he is lawfully held for some other lawful cause. The Appellant's passport and other travel documents, if any, shall be immediately given to him so that he can travel back to his own country or any other destination of his own choice if his VISA for stay in the United Republic of Tanzania has expired. EORGE M. FIASAJU JUDGE 31/8/2022 6

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