

TANZANIA / JUDGMENT

mustapha yusuf mussa vs republic

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IN THE UNITED REPUBLIC OF TANZANIA IN THE HIGH COURT OF TANZANIA IN THE
DISTRICT REGISTRY OF MTWARA AT MTWARA CRIMINAL APPEAL NO. 87 OF 2022 (Arising
from Liidi District Court in Criminal Case No. 5 of 2022) Mustapha Yusuf Mussa APPELLANT
VERSUS REPUBLIC..... .RESPONDENT

JUDGEMENT

Date of last Order: 26.06.2023 Date of Judgment: 04.08.2023 Ebrahim, J.: The appellant herein was convicted and sentenced to a term of ten years' imprisonment on his own plea of guilty. The appellant was charged with the offence of Trafficking in Narcotic Drugs c/s 15A (1) and 2(c) of the Drugs Control and Enforcement Act, Cap 95 RE 2019. Aggrieved by conviction and sentence, the appellant lodged the instant appeal initially raising four grounds of appeal complaining Page 1 of 11 that he was pressured by prosecution; and that he was not warned as he is a layperson hence the plea was not taken according to the law. On 30.11.2022 he filed additional grounds saying that the plea of guilty was equivocal entered as a result of mistake and misapprehension and that the case was not proved beyond reasonable doubt. On the date of hearing the appellant added another three grounds of appeal which were the same as the previous grounds mainly complaining that the plea was equivocal. At the hearing of the instant appeal the Appellant appeared in person unrepresented and the Respondent was represented by Mr. Edson Mwapili, learned State Attorney. The Appellant prayed to adopt his grounds of appeal and prayed for the court to consider the same. Mr. Mwapili supported the conviction and sentence. He argued that all ten grounds of appeal raised by the Appellant are prohibited by the provisions of the law i.e., section 360(1) of the Criminal Procedure Act, Cap 20 Re 2022 which disallows appeal on a plea of guilty. He contended that all the grounds of appeal are Page 2 of 11 pegged on one issue as to whether the plea of guilty was equivocal. He explained that an appeal on a plea: of guilty can only be preferred in the circumstances where the plea is imperfect, ambiguous or unfinished; appellant pleaded guilty by mistake or misapprehension; charge did not disclose the offence known to law; or the appellant could not have been convicted - Lawrence Mpinga V R, [1983] TLR 169; and Karlos Punda V R, Criminal Appeal No 153 of 2015 which were cited with authority in the Court of Appeal case of Michael Adrian Chaki Vs The Republic, Criminal Appeal No. 399 of 2019. He referred to the charge sheet and said that the same is properly framed from the offence and

particulars and that the Appellant comprehended the charge facing him as reflected at page 2 of the typed proceedings where the Appellant explained how he committed the offence. He said, the Appellant response on the facts read before him shows that he understood the offence charged and those facts described the elements of the offence, he concluded that the plea was unequivocal hence the appeal should be dismissed. Page 3 of 11 In rejoinder, the Appellant complained to have been beaten at the police; and that he did not have any bag or parcel. The position of the law i.e Section 360 (1) of the Criminal Procedure Act Cap 20 R.E 2022 (CPA) disallows appeals against conviction where such conviction was a result of the appellant's own plea of guilty save for the extent or legality of the sentence. For easy of reference the section reads: "360 (1) No appeal shall be allowed in the case of any accused person who has pleaded guilty and has been convicted of such plea by a subordinate court except as to the extent or legality of the sentence" The above notwithstanding, in applying the above prohibition against the appellant, it must first be established that the plea was unequivocal. In different occasions, this court and the Court of Appeal have highlighted the circumstances under which an appeal on plea of guilty against conviction may be allowed. In *Lawrence Mpinga v. Republic* (supra) it was held that: "An accused person who had been convicted by court of an offence on his own plea of guilty, may appeal against the conviction to a higher court on the following grounds: Page 4 of 11

1. That 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 a mistake or misapprehension;
3. That the charge laid at his door disclosed an offence not known to law; and
4. That upon the admitted facts, he could not in law have been convicted of the offence charged." That being the position of the law, the issue for consideration is whether looking at the proceedings and facts as reflected in the records of the trial court, the appellant unequivocally pleaded guilty to the charge. In answering the above posed issue my reliance shall be confined in the conditions set in the case of *Michael Adrian Chaki V. Republic* (supra). In that case the Court of Appeal of Tanzania set conditions which must be conjunctively met for a valid conviction to be found on an unequivocal plea. The conditions are:
 1. "The appellant must be arraigned on a proper charge. That is to say, the offence section and the particulars thereof must be properly framed and must explicitly disclose the offence known to law; Page: 5 of 11
 2. The court must satisfy itself without any doubt and must be clear in its mind, that an accused fully comprehends what he is actually faced with, otherwise Injustice may result.
 3. When the accused is called upon to plea to the charge, the charge is stated and fully explained to him before he asked to state whether he admits or denies each and every particular ingredient of the offence. This is in terms of section 228 (1) of the CPA.

4. The fact adduced after recording a plea of guilty should disclose and establish all the elements of the offence charged:
5. The accused must be asked to plead and must actually plead guilty to each and every ingredient of the offence charged and the same must be properly recorded and must be clear (see Akbarali Damji vs R. 2 TLR 137 cited by the court in Thuway Akoonay vs Republic [1987] T.L.R. 92);
6. Before a conviction on a plea of guilty is entered, the court must satisfy itself without any doubt that the facts adduced disclose or establish all elements of the offence charged." 1 shall begin with the claim by the Appellant in his rejoinder submission that he was tortured at the police that was why he pleaded guilty, Oubrightly, such argument does not hold: water because the fact that he was in police custody did not feature as his ground of appeal nor as his defence of pleading guilty. More-so there is no record to show that he was forced to do so. Equally the same is his complaint on the ground of appeal that he was Page 6 of 11 pressured by prosecution. He did not say how prosecution pressured him to plead guilty. If at air I find this ground appeal as an afterthought and I dismiss it. Another thing that I find it important to address, is the complaint by the Appellant that the case was not proved beyond reasonable doubt. Again, this point is irrelevant at the circumstances of the case because the case did not go to a full trial since the Appellant pleaded guilty to the charged offence. The issue in this case therefore as rightly observed by the counsel for the Respondent is whether the plea of guilty was unequivocal. In ascertaining the issue in controversy, I shall re-visit the proceedings on record. On 09.02.2022, it was recorded by the trial court that charge was read over to the Appellant in Kiswahili and he pleaded as follows: "Ni kweli nimekamatwa nikisafirisha bang! kiasi ch a 2.73 kilo ndani ya basi la Machinga nikitokea Mtwara kwenda DSM", The Appellant then signed and dated his plea. Conspicuously, the Appellant did not only plead to the offence but was also descriptive to the quantity and means of his travel in Page 7 of 11 trafficking the illegal drugs. In-fact if you look at the particulars of the charge sheet, the bus was not even mentioned but rather the quantity, the point of interception and the date. The Appellant volunteered the information himself. At this stage, I would say that the Appellant understood and voluntarily pleaded guilty to the charged offence. Coming to the facts of the case, the Appellant was recorded descriptively admitting to the facts from his particulars as they appear on the charge sheet on how he travelled with the seat number to the fact that the police officer stopped the bus at the check point and suspected his red bag. When the bag was searched before him they found two plastic bags with bhang leaves one ready to use and another one was unprepared. He admitted also that the certificate of seizure was filled in and signed witnessed by two witnesses and there after taken to the police. On reading facts, the prosecution tendered the bus ticket which was admitted as exhibit P1 and the red bag containing a black nylon bag with dried leaves suspected to be bhang was admitted as exhibit P2. Both exhibits were admitted without objection from the Appellant. Page 8 of11 Thereafter when the accused person was asked if all the facts read over by the prosecution are correct he respondent as follows: "All facts read aver and explained to me by prosecutor are correct and I admit them all". He signed and dated and

the trial Magistrate proceeded to convict the Appellant on his own plea of guilty. I have extensively reproduced what transpired in order to show the extent of the comprehension of the offence by the Appellant and that he pleaded guilty on his own volition. As alluded earlier, the plea by the Appellant was very descriptive opposite of calling it ambiguous, imperfect or a mistake. More so, the charge sheet together with the facts of the case explicitly explained the ingredients of the offence which the Appellant admitted to have been explained about and understood them. From the above therefore, I join hands with the counsel for the Respondent that the plea of guilty by the Appellant was nothing but unequivocal plea of guilty hence disallowed by the law to appeal against it. I therefore dismiss the grounds of appeal. Nevertheless, I find it prudent for the ends of justice to discuss about the imposed sentence of 10 years meted to the appellants. Page 9 of 11 I am abreast of the jurisprudential position of the law that the sentencing is the territory of the trial court and the appellate court is discouraged to interfere with it unless the sentence imposed was manifestly excessive or inordinately too low :or the trial Judge in passing sentence ignored to consider important matter or circumstances which he ought to have considered; and the sentence imposed was wrong in principle. The above factors were well discussed by the Court of Appeal in the case of Silvanus Leonard Nguruwe V Republic (1981) TLR 66 which was cited with approval in the case of Shida Manyama V. R Criminal Appeal No. 323/2014. I am also alive to the principle of the law that maximum punishment should be reserved for the worst offence of the class of which the punishment is provided as stated in the case of Juma Mniko Muhere V R, Criminal Appeal No. 211 of 2014 (Unreported). In the antecedents, the prosecution apart from praying for the severe sentence on the reason on that narcotic drugs cause problems the mental health of the human being unfortunately which cause the increase of criminal acts to the users, they admitted that the Appellant has no record of previous conviction meaning that he is a first offender. Page 10 of 11 I am inspired by the spirit of the Court of Appeal in the case of Lubaga Senga Vs R, [1992] TLR 357 which held as that: "(i) Every sentencing process cannot and should not, unless a statutory minimum sentence is being administered, avoid individualization of the offence, and the circumstances of the offender, otherwise the whole exercise becomes mechanical; (ii) the appellant was, in the circumstances, entitled to more lenient treatment than he was accorded". In this case the appellant pleaded guilty to the charged offence. In considering that the sentence is not a mandatory minimum sentence, the Appellant deserved some lenience. In the circumstances therefore, I find that the sentence was excessive on the circumstances of the case and I accordingly reduce the same and impose a sentence that would result to an immediate release of the Appellant from prison unless otherwise held for other lawful cause. Accordingly ordered. JUDGE. Mtwara 04.08.2023 Page 11 of 11

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