

TANZANIA / JUDGMENT

samweli ndahani vs republic

2017 tzhc 2064 28 march 2017

COURT
TZHCDECIDED
28 March 2017

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“ORIGINAL” IN THE HIGH COURT OF TANZANIA DODOMA DISTRICT REGISTRY AT DODOMA CRIMINAL APPELLATE JURISDICTION DC CRIMINAL APPEAL NO. 33 OF 2016 {Originating from the District Court of Kongwa Criminal Case No. 75 of 2015, Hon. M.I SENAPEE, RM) SAMWELI NDAHANI..... APPELLANT VERSUS THE REPUBLIC..... RESPONDENT JUDGEM ENT Mansoor, J: 15th FEBRUARY 2017 & 28th FEBRUARY 2017 This appeal arise out of the judgment dated 1st July 2015, passed by the District Court of Kongwa in Criminal Case No. 79 of 2015, by which, the Appellant was convicted upon his own “ORIGINAL” plea of guilty of the offence charged of Escape from Lawful Custody contrary to Section 116 of the Penal Code, Cap 16 R:E

2002. He was convicted and sentenced to two years jail sentence. The prosecution case against the appellants very briefly was as follows: On 20.03.2015 at about 12.00 hours, the prison officer A 6408 S/SGT Kaombwe was at the Shamba Mkoka Prison, he was with the prisoners including the Appellant. The prisoners were carrying out the farming activities at the farm, and while carrying on with farming, the appellant tried to escape from the custody. The Appellant was serving a jail sentence. The accused/ Appellant was found at Kibaigwa and he was arrested. He was interrogated and pleaded guilty before the police, he also pleaded guilty before the Court when his charge was read over to him. The Appellant now filed this appeal and has raised the following grounds of Appeal: “ORIGINAL”
1. That , the learned Magistrate erred in law and facts as the prosecution case did not prove the case beyond all reasonable doubt;
 2. The procedure of dealing with plea of guilty was not followed. During the hearing of the Appeal, Ms. Kezilahabi, the State Attorney who appeared for the Republic opposed the appeal arguing that the prosecution was not required to prove the case beyond reasonable doubt since the Appellant had pleaded guilty. The facts were read over to him and he also agreed to the facts. The Court convicted him of his own plea. Ms. Kezilahabi quoted Section 360 of Cap 20 that no appeal lies on a plea of guilty. She also said that the procedure for conviction was strictly complied with, and thus the appeal lacks merits. I have had a chance to go through the proceedings of the Trial Court. I have seen it that the Appellant had pleaded guilty of the offence charged. The accused pleaded guilty before the Court below before the trial commenced. So no “ORIGINAL” appeal under Section 360 (1) of the Code of

Criminal Procedure, Cap 20 R: E 2002 ought to have been maintained. As the accused person pleaded guilty, there was no trial at all, and so there was no requirement of the prosecution to prove the case beyond reasonable doubt. 360.-(1) No appeal shall 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. This is the case in which the accused person pleaded guilty, no appeal ought to have been filed under Section 360 of the Code, "except as to the extent or legality of the sentence". There is no such illegality. Therefore, the appeal shall have to be dismissed. Consequently, this appeal lacks merit and is disallowed; the conviction and the sentence of the trial Court is confirmed. 4 "ORIGINAL" The Appellant shall continue serving the sentence as passed by the Trial Court. Judgement delivered in Court today in the presence of the Appellant, Kezilahabi, and State Attorney for the Respondent Republic and Mr. C.A.Chali the Court Clerk. JO— L. MANSOOR r# JUDGE I .. : I £8™ FEBRUARY 2017

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ORIGINAL SOURCE	https://media.tanzlii.org/media/judgment/197408/source_file/samweli-ndahani-vs-republic-2017-tzhc-2064-28-march-2017.pdf
CASE PAGE	https://chat.esheria.ai/case-law/tanzania/samweli-ndahani-v-the-republic-pleaofguilty-tzhc-2017

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