IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

THE SUB-REGISTRY OF TABORA

CRIMINAL APPEAL NO. 17 OF 2023

(Originating from Tabora Resident Magistrate Court
Economic Case No. 28 of 2022)

DEOGRATIUS S/O ENYASI.....APPELLANT

VERSUS

THE REPUBLIC.....RESPONDENT

JUDGMENT

Date: 17/7/2023 & 11/8/2023

BAHATI SALEMA, J.:

The appellant herein, **Deogratius s/o Enyasi** was convicted by the Resident Magistrates' Court of Tabora at Tabora, with two counts of unlawful entry into a game reserve contrary to sections 15(1) and (2) of the **Wildlife Conservation Act,** No. 5 of 2009 and unlawful possession of a weapon in the game reserve contrary to sections 17(1) and (2) of **the Wildlife Conservation Act**, No. 5 of 2009 read together with paragraph 14 of the First Schedule to and sections 57(1) and 60(2) of **the Economic and Organized Crime Control Act**, Cap. 200 [R.E. 2002].

The particulars of the charge can be summarized thus: on the 12th day of July, 2022 Deogratius Enyasi and Tungu Paulo entered the Yerusalem area in Moyowasi Game reserve within Kaliua District in Tabora region without a permit from the Director of Wildlife. On the same day, they were found in possession of weapons, to wit, one knife and one bush knife, without written permission from the Director of Wildlife.

On 20/09/2022 when called on for a hearing, Deogratias s/o Enyasi pleaded guilty, while the second accused pleaded not guilty. The first accused was sentenced on the first count to pay a fine of TZS 200,000/= in default to serve two years imprisonment, while on the second count to twenty years imprisonment.

Aggrieved by the decision, he has appealed to this court on the following grounds: -

1. *That, the case for the prosecutions was not proved, against the appellant, beyond reasonable doubt as required by the law.*
2. *That, failure to tender the weapons allegedly found in possession of the appellant and the cautioned statement affected the plea of guilty by the appellant.*
3. *That, the learned presiding magistrate erred in fact and law to allow the State Attorney to read the facts of the case to the appellant under Section 192(3) of the Criminal Procedure Act, Cap.20 [R.E. 2022] which carters for an accused person who has pleaded not guilty.*

The appellant prayed to this Court to allow the appeal, quash the conviction, set aside the sentence, and order the appellant's release from prison custody.

When the matter was called on for hearing, the appellant was unrepresented, whereas the learned State Attorneys, Ms. Wivina Rwebangira, Mr. Charles Magonza, and Ms. Idda Rugakingira represented the Republic, the respondent herein.

The appellant, who appeared in person; preferred to let the learned State Attorney first respond to his grounds of appeal, and he would come in later and prays his grounds of appeal be adopted.

At the outset, the respondent opposed the appeal. She submitted that the accused has entered a plea of guilty, and is barred from appealing according to Section 360 of **the Criminal Procedure Act**, Cap. 20, and also in the case of **Mtumwa Silima @ Bonge v. Republic**, Criminal Appeal No. 11 of 2019. The accused has not met the ingredients stated in the **Mpinga case**, 1983 TLR 166, and is barred from appealing before this court.

As to the first ground of appeal, she stated that the accused pleaded guilty to the offence. This is revealed on pages 4 and 5 of the proceedings. Since the plea was unequivocal, the prosecution did not go further to tender the document, as the appellant admitted to the offence. Reinforcing her stance in the case of **Joel Mwangambako v. Republic**, Criminal Appeal No. 516 of 2017, page 13. The court held that;

> *"We accept Mr. Mtenga's submission that there was no need for proof as the appellants' conviction was soundly based upon his own plea of guilty. Indeed, the applicable procedure when an accused person pleads guilty to a charged offence,as stated in numerous decisions of the court, involves no production of proof of the charge but a procedure for ascertaining if the appellant's plea is unequivocal* – see **Adan v. Republic** (1973) EA 445, and likewise the court's decisions in **John Faya v. Republic**, Criminal Appeal No. 198 of 2007, and **Constantine Deus @ Ndinjai v. Republic**, Criminal Appeal No. 54 of 2010 (both unreported) on page 8 plea

was clear, he was convicted on his own plea. This ground is unmerited.

As to the second ground of appeal, failure to tender weapons and caution statement, the respondent submitted that it is not a legal requirement since the appellant had pleaded guilty to the offence, **Joel Mwangambako** (supra). The learned state Attorney reiterated her submission in chief that this was not a requirement of law.

On the last ground of appeal, she submitted that under section 192 (3) of **the Criminal Procedure Act**, Cap. 20 carters for the accused person. The facts were read to him. He pleaded under Sections 192 (1) and (2) of **the Criminal Procedure Act**, Cap. 20 [R.E. 2022]. It is silent on 192 (3) of **the Criminal Procedure Act**, Cap. 20 since there is nothing explained. Even if it was read, it has not changed the facts as the accused pleaded guilty.

In his brief rejoinder, he prayed for the court to allow the appeal.

Having considered both parties' submissions and painstakingly read the record from the lower court. It is undisputed fact that the appellant was convicted after his plea of guilty when he was arraigned in court. Now the question centers on whether the appellant's plea in the trial court was unequivocal. If it is established that the plea was unequivocal then that will be the end of the matter, as Section 360 (1) of **the Criminal Procedure Act,** Cap.20 bars appeals from a conviction based on a plea of guilty. The said provision states that:

"*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."

The above is the general rule. I am, however, mindful of the fact that, under certain circumstances, an appeal may be entertained notwithstanding a plea of guilty. See **Laurent Mpinga v. Republic** (1983) TLR 166 and **Ramadhani Haima v. The D.P.P**, Criminal Appeal No. 213 of 2009 (unreported). In Laurent Mpinga's case, Samatta, J. (as he then was), stated thus:

> "*An accused person who had been convicted by any court of an offence on his own plea of guilty/ may appeal against the conviction to a higher court on the following grounds:-* **one** *That taking into consideration the admitted facts his plea was imperfect ambiguous or unfinished end*, for that reason the lower court erred in law in treating it as a plea of guilty; **two**, *that he pleaded guilty as a result of a mistake or misapprehension*; **three**; that *the charge laid at his door disclosed an offence not known to law; and* ***four;*** *That upon the admitted facts, he could not in law have been convicted of the offence charged."*

It is now necessary, at this juncture, to reproduce the appellant's plea and what transpired in the trial court. After the charge was read over and explained to the accused he is recorded as having said;

1st count:

1st accused: It is true.

2nd accused: It is not true.

Court: 1st Accused: Entered a plea of guilty.

2nd Accused: entered a plea of not guilty.

2 count

1st accused: It is true.

2nd accused: It is not true.

The appellant's plea was recorded as guilty, and the facts were read over to him and the Memorandum of the agreed facts.

After that, the State Attorney prayed to tender the exhibits, to which the first accused had no objection.

State Attorney: I pray to tender the certificate of seizure.

Accused: No objection

Court: A certificate of seizure was admitted and marked as P1 and was read aloud by the State Attorney Fyengete(sic)

Accused: I admit all the facts to be true and signed.

The appellant admitted the facts, the trial court convicted him as charged. He was then invited to give his mitigation, and upon doing so, the trial court proceeded to sentence him to 20 years imprisonment.

Having examined the charge and the facts read over to the appellant and his reply, I am certain that the appellant understood the nature of the offence and the words used by the appellant in response are very clear and unambiguous. There was no vagueness or misapprehension in the plea he entered before the trial court. To that end, I see no doubt in

my mind that the appellant's plea of guilty was equivocal, and as such, I do not see any reason to fault the trial court's finding. At any rate, I am aware that a person convicted on his unequivocal plea of guilty is, under Section 360 (1) of **the Criminal Procedure Act**, prohibited from appealing unless it is against the extent and legality of the sentence. Looking at the circumstances of this matter, in which the appellant's plea was unequivocal, I agree with the learned State Attorney that no appeal was allowed.

On the first ground of appeal, there is no requirement to prove the case beyond reasonable doubt when the accused person admits the same. In the case of **Joel Mwangambako v the Republic**, Criminal Appeal No. 516 of 2017 page 5 of 12 (unreported), the court held that,

> "*Whereas in the case in point, the accused pleaded guilty, and plea is unequivocal and unambiguous, the court assumes jurisdiction of convicting and sentencing him based on the plea of guilty.* Consequently, the first ground of appeal fails.

As to the second ground of appeal failure to tender the weapons allegedly found in possession of the appellant and the cautioned statement affected the plea of guilty by the appellant.

On correctly submitted by the respondent, failure to tender the exhibits in court did not vitiate the proceedings since it is not a requirement of law for the exhibits to be read over when the accused pleads guilty to the offence. This was also stated in the case of **Frank Mlyuka v. Republic**, Criminal Appeal No. 404 of 2018 (unreported), where the Court relied on its earlier decision in the case of **Matia Barua v. Republic**, Criminal Appeal No. 105 of 2015 (unreported), in which it

was stated that tendering of exhibits after the accused person has pleaded guilty to the offence or where conviction is based on a plea of guilty, is not a legal requirement. As such, I find this ground devoid of merit.

On the last ground of appeal section 192 (3) of **the Criminal Procedure Act,** Cap. 20, the learned state attorney conceded that carters for the accused person who has not pleaded guilty. However, she was quick to point out that, despite the fact that it was read, it did not change the facts since the accused pleaded guilty.

In view of the above considerations, I find that the appellant pleaded guilty to the charge of Unlawful Entry in a game reserve c/s 15(1) and (2) and the second count of Unlawful Possession of weapons 17(1) and (2) (2) of the **Wildlife Conservation Act No. 5/2009** with a full understanding of the charge against him. There are no grounds to believe that the appellant did not fully understand the nature of the offence when he pleaded guilty to the charge.

It is for the above-stated reasons that I hereby dismiss the appeal in its entirety. The trial court's conviction and sentence are upheld.

Order accordingly.

Right of appeal explained.

A. BAHATI SALEMA

JUDGE

11/08/2023

Court: Judgment delivered in presence of both parties.

A. BAHATI SALEMA

JUDGE

11/08/2023