

IN THE HIGH COURT OF TANZANIA  
AT DAR ES SALAAM

Library

CRIMINAL APPEAL No. 22/2004  
(Originating from Criminal Case No. 85/2004  
RM'S Court Sokoine Drive)

GABRIEL MAYO - APPELLANT  
VERSUS  
REPUBLIC - RESPONDENT

JUDGMENT

JUNDU, J.

The Appellant, in the trial court, was charged with the offence of ~~disobeying a lawful court order~~ contrary to Section 124 of the Penal Code and an offence of ~~discharging foul water under section 80(0), (7)~~ and 8(1) of the Township Rules Cap 701. He appeared before the trial magistrate on 21/1/2004. The charges were read to him and he was convicted on his own plea of guilty. On 22/1/2004, he was sentenced to serve 3 ~~months imprisonment~~ for the first count and to pay fine of shs.5,000/= or ~~one month imprisonment~~ for the second count.

Being aggrieved by the conviction and sentence imposed by the trial court, the Appellant has appealed to this court. He has raised about 6 grounds of appeal in his memorandum of appeal. However, on admission of the appeal this court directed that it should consider inter alia

- (i) whether the plea taken and entered by the trial court amounted to an unequivocal plea; and
- (ii) the legality of the sentence and order imposed thereto.

The Appellant presented the appeal on his own and had nothing more to add other than what he had stated in his memorandum of appeal. He states in his first ground of appeal that

"That, your Lordship, the Senior Resident Magistrate erred in law and misdirected himself by not writting the facts that were admitted or disputed that amounted to an equivocal plea which is bad in law"

Miss Mwanda, the learned State Attorney who represented the Respondent did not support the conviction and the sentence imposed upon the Appellant by the trial court because in her considered opinion no unquivocal plea was entered by the trial magistrate after the Appellant had pleaded guilty to the charge.

I have looked at the one page proceedings taken on 21/1/2004 by the trial magistrate, it reads as follows :

"21/1/2004

Coram: Kiwanga - SRM  
P.P. Baguma  
CC: Manumbu  
Acc: Pr.

Charge read over and explained to the accused who plead :

1st count: True

2nd count: True

Court: PGE in all counts  
P.P.: Facts as per charge true  
Acc: I admit facts to be true  
Court: Accused is convicted on his own plea of guilty.  
Mitigation: I pray for mercy  
Sentence: On 21/1/2004  
Order: Accused remanded "

Miss Mwanda, the learned State Attorney submitted that the act of the Appellant to plead guilty to the charge is provided for under Section 228(1) of the Criminal Procedure Act 1985 and that the procedure either on a plea of guilty or not guilty requires that the trial magistrate to direct the public prosecutor to read the facts of the case to the accused person, that is the summary of the offence against which he is charged of so that the trial magistrate can satisfy himself that the accused has pleaded guilty to what he is being charged of.

Miss Mwanda supported her submission with decided cases. She cited the case of Adam vs Republic [1973] E.L.R. 445 (CA) page 447 where it was stated that :

"the facts serve two purposes.

- (i) it enables the magistrate to satisfy himself that the plea of guilty was real and unequivocal and that the accused has no defence and it gives the magistrate the basic material on which to assess sentence"

She also cited the case of Misago s/o Semumba vs Republic [1967] HCD n.133 where it was said that after a plea of guilty is entered the public prosecutor is supposed to narrate the facts which disclose the offence. She submitted further that in the present case, it is clear from the just one page proceeding that there were no facts that were read to the Appellant by the public prosecutor and for this reason the procedure was violated, therefore, there was no an unequivocal plea though the Appellant had pleaded guilty to the two counts which he was charged of. She therefore, prayed to this court to quash and set aside the conviction and sentence imposed upon the Appellant by the trial court.

I have carefully considered the submission of the learned State Attorney Miss Mwanda for the Respondent and the grounds of appeal advanced by the Appellant. I quite agree with the first ground of appeal in the memorandum of appeal of the Appellant that the trial magistrate misdirected herself by not writing the facts that were allegedly admitted by the Appellant after he had pleaded guilty to the charge, this amounted to an equivocal plea which is bad in law. I also fully agree with the submission of Miss Mwanda, the learned State Attorney that the trial magistrate did not record <sup>the</sup> facts that were read to the Appellant after he had pleaded guilty to the charge and that was contrary to the established procedure for an unequivocal plea to be in place as held in the case of Adam vs Republic [1973] EA 445 (CA) at page 447 and in the case of Misago s/o Semumba vs Republic [1967] HCD n.133 cited to me by Miss Mwanda, the learned State Attorney who appeared for the Respondent. No wonder Miss Mwanda did not support the conviction and the sentence imposed upon the Appellant by the trial court. Miss Mwanda prayed that the case should start de novo but in my mind I am aware that the Appellant has almost finished his term of imprisonment of 3 months on the first count.