IN THE HIGH COURT OF TANZANIA

(MTWARA DISTRICT REGISTRY)

AT MTWARA

CRIMINAL APPEAL NO. 89 OF 2020

(Original Mtwara District Court Criminal Case No. 196 of 2018)

BADIRU MUSSA ISSA.....APPELLANT

VERSUS

THE REPUBLIC.....RESPONDENT

JUDGMENT

26 May & 12 August, 2021

DYANSOBERA, J.:

The appellant Badiru Mussa Issa was arraigned before the trial District Court for an offence of escape from lawful custody contrary to Sections 116 and 35 of the Penal Code. The particulars alleged that the appellant, on 10th day of October 2018 at Mtwara District Court premises within the Municipality and Region of Mtwara, did escape from the lawful custody of the police officer one J. 45 PC Njane.

The appellant pleaded guilty to the offence and was, on conviction, sentenced to twelve (12) months gaol term. He was not satisfied with

both conviction and sentence and has appealed to this court on the following three grounds:

1. The trial Resident Magistrate erred in law and fact by not considering my prayer into account that I was first offender and I was supposed to be given at least a minimal sentence not the maximum sentence.
2. The trial Resident Magistrate erred in law and fact by not considering I pleaded guilty during the charge read over me and I prayer but trial resident magistrate sentenced in least minimal sentence not maximum sentence or and fine as a way of reducing the number of people in the prison as well as good alternative of solving problem.
3. The trial Resident Magistrate erred in law and fact without looking for good solution of solving a problem to provide education but the trial resident magistrate did not do so to appellant even if the appellant pleaded guilty and it is first offender.

On the 6th day of June, 2021 when the appeal came up for hearing, the appellant appeared in person and the respondent was represented by

the learned Senior State Attorney, Mr. Paul Kimweri. The appellant opted the respondent to start responding his grounds of appeal and then he would rejoin.

Mr.Kimweri informed the court that the appellant's complaints are on the severity of the offence of twelve months imprisonment and the propriety of the conviction. He told the court that the sentence of twelve months was not excessive as under S. 35 the maximum penalty is two years term of imprisonment. He was of the view that the grounds on severity sentence lack seriousness.

On the propriety of conviction that is failure to comply with S. 312 CPA, learned Senior State Attorney contended that the present case did not reach the stage of the judgment as the appellant admitted the offence and was convicted on his plea. He was of the view, therefore, that the requirements under Section 312 of the CPA does not arise. He explained that where the accused admits the offence, the law is clear that he is convicted and sentenced. This is what this court did, learned Senior State Attorney argued.

In his brief rejoinder, the appellant said that he was asking to be fined as a warning and that the custodian sentence was improper for him.

Having considered the record of the trial court and the grounds of appeal, i am contrained to find that this appeal lacks any legal merit. The appellant admitted the offence, he admitted the narrated facts that formed the

ingredients of the offence charged. He was convicted on his own plea. There was no suggestion leave alone indication that the plea was ambiguous. The conviction which proceeded from the appellant's confession cannot be assailed.

With respect to the sentence, the law is clear. Section 35 of the Penal Code provides as follows:

> When in this Code no punishment is expressly provided for any offence, it shall be punishable with imprisonment for a term not exceeding two years or with a fine or with both.

The learned trial magistrate had option to either sentence the appellant to a custodial sentence not exceeding two years term of imprisonment, or a fine or to both a fine and a custodial sentence. The maximum sentence was, therefore, an imprisonment with a fine. He, in its discretion, sentence to imprisonment only. As rightly argued by the learned Senior State Attorney, such sentence was not excessive but only minimum. Besides, the sentencing power of the trial court was within its discretion. In sentencing the appellant to twelve months' term of imprisonment, the learned Resident Magistrate was excersing his discretion. In such circumstances, the appellate court may only interfere with such exercise of discretion on well settled principles which are that upon the court being satisfied that the trial court decision was clearly wrong due to misdirection or because the court acted on matters which it should not have acted or it has failed to take into consideration matters which it should have

taken into consideration and in doing so it arrived at arrived at a wrong conclusion. A case in point is **Mbogo v Shah** [1968] EA 93.

Since in the present appeal there was no suggestion by the appellant that the trial court committed such failures, it is improper for this court to interfere with the discretion properly excercised by the trial court.

For the reasons stated, I find the appeal against both conviction and sentence devoid of merit. Consequently, it is dismissed in its entirety.

W.P.Dyansobera

Judge

12.8.2021

This judgment is delivered under my hand and the seal of this Court on this 12th day August, 2021 in the presence of Mr. Wilbroad Ndunguru, learned Senior State Attorney for the respondent Republic and in the absence of the appellant.

W.P. Dyansobera

Judge