



CRIMINAL PRACTICE MANUAL

“ACCUSED’S PLEA”



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LLB UDSM, LLM UNICRI & UNIVERSITY OF TORINO
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FOREWORDS

This manual is useful for prosecutions of criminal cases in ensuring proper pleas by accused persons are entered and properly recorded. Sometimes the accused may pronounce a plea in a very clear language but the trial court may record it in words which affect it. There are several other important aspects the court and officers of the court are required to adhere to, when the accused is called to plead to the charge. The manual has included a good number of current Court of Appeal precedents to update the reader on appropriate legal positions to apply. It is my hope that this it will produce fruitful results in the criminal justice system.



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Other special thanks go to my caring, loving, and supportive wife, *Hilda John* and our children; my deepest gratitude. It was a great comfort and relief to know that you were willing to provide management of our household activities while I was preparing this work. My apology to you and our children for taking away the time you should have benefited out of me. My heartfelt thanks.



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PART ONE

1.0 MEANING OF PLEA

A plea is an accused's formal response to a criminal charge. It may be a response of guilty, not guilty or no contest to a criminal charge.¹

Section 228(2) and **282** of the **CPA** clearly states that, once an accused admits the truth of the charge, the court may proceed to record his admission, convict and pass a sentence against him forthwith.

2.1 ESSENTIALS OF A PROPER PLEA

The following are important aspects required for a plea to a charge to be proper;

2.1.1 Accused must understand the charge

As a matter of fair trial, the accused needs to understand the charge read over to him before entering a plea. The law requires that he must be put in a position to understand it and the court must explain to him every constituent of that charge. Thereafter, the accused is required to admit or deny every constituent part thereof. The trial Magistrate or Judge should also record the accused's reply in a form which would satisfy an appeal court that he fully understood the charge and pleaded guilty to every element of it unequivocally.²

¹ NPS Criminal Case Manual 2023, Bryan A Garner, Editor in Chief, Black's Law Dictionary, 8th Edition, pg.1189

² Republic v Yosani Egalu and others,[1965] EACA 65



In ***Naoche Ole Mbile v Republic***,³ it was emphasized that, at the beginning of the criminal trial the accused must be arraigned, that is, the court has to put the charge or charges to him and to require him to plead. Non-compliance with it renders the trial a nullity.⁴

In another case of ***Benjamin Holela v Republic***,⁵ it was emphasized that, the plea should be voluntary and free and must be done by a fit person capable of understanding the charge read to him. Also, if the accused is represented by an advocate, it is the accused himself who is required to plea, not his advocate.⁶

2.1.2 Accused be present physically

When a charge of which the accused person is facing is to be read over in court, the accused person must be physically present and the charge must be put to him to plead in person. Reading the charge in court while the accused person is not present is fatal and renders the proceedings a nullity. The general principle of law requires that, a person should not be put in jeopardy of a conviction when he is unaware of the source of the jeopardy itself.⁷

³ Naoche Ole Mbile v Republic [1993]TLR 253

⁴ Juma Gulaka and 2 others vs Republic, Criminal Appeal No. 585 of 2017, CAT, (unreported), Yustine Robert vs Republic, Criminal Appeal No. 329 of 2017, CAT (unreported).

⁵ MT.7479 Benjamin Holela v Republic, [1992] TLR 120

⁶ Clement Pancras vs Republic, Criminal Appeal NO.321 of 2013 CAT (unreported) pg 9

⁷ Khalid Athumani vs Republic [2006] TLR 79 CA



A clear example is like what happened in ***Musa Mbwaga & Another***⁸ where the accused person escaped from police custody. The court proceeded on under section 226 of the CPA and along the trial the charge which included him was substituted. The trial proceeded on with a new substituted charge and convicted on a charge he was not called to plead after substitution. The Court of Appeal nullified the proceedings based on that irregularity.⁹

2.1.3 Assignment of an interpreter

An accused person has the right to understand the proceedings of his trial, thus where he does not understand the language used in court, or in subsequent stages when witnesses of different languages appear to testify, the court must procure an interpreter to take part in that trial.

The law requires that, whenever any evidence is given in a language not understood by the accused and he is present in person, it shall be interpreted to him in open court in a language understood by him. If represented, to the language the advocate understands. Conducting a case in circumstances where the accused person is not conversant with the language used is fatal and vitiates the trial.¹⁰

⁸ *Musa Mbwaga & Another vs Republic*, Criminal Appeal No. 433 of 2007, CAT Mbeya (unreported),

⁹ *Naoche Ole Mbile vs Republic* [1993] TLR 253 CAT

¹⁰ Section 211 of the CPA, *Dastan Makwaya vs Republic*, Criminal Appeal No. 179 Of 2017, (unreported), *Havyalimana Azaria and two others vs. Republic*, Criminal appeal No. 539 2015, CAT, (unreported)



2.1.4 Duty to procure interpreters

In a number of cases, the Court of Appeal has stated that the duty to avail an interpreter in Court is on the trial Court as per **section 211 of the CPA**.¹¹

2.1.5 Manner of interpreter's oath

Before interpreters begin to interpret between the languages used in court, the procedure is to require them to swear or affirm first. Interpreters do not swear or affirm the same way witnesses do; as opposed to witnesses, they do not swear or affirm to speak the truth, they swear to faithfully and correctly interpret words between the languages spoken. They do so because they are not adducing evidence, instead, their duty is only to interpret the languages spoken. Improper form of oath or affirmation by interpreters may vitiate the trial for wants of their impartiality.¹²

2.1.6 Manner of recording a Plea

The accused person must plead to the charge personally, not through his advocate¹³ and where he admits the truth of the charge, ***his admission must be recorded as nearly as possible in the words he uses to the level***

¹¹ Barutwayo Zahaki vs R Criminal Appeal No.432 of 2015 CAT Tabora (unreported) pg. 6 and Havyalimana Azaria and two Others v. Republic, Criminal Appeal No. 539 of 2015, CAT Bukoba (unreported), Kigundu Francis and another v. Republic, Criminal Appeal No. 141 of 2010, CAT (unreported). Moses Mayanja@Msoke vs R, Criminal Appeal No. 56 of 2009, CAT Mwanza (Unreported), Dastan Makwaya & another vs R Criminal Appeal No.179 of 2017 CAT Bukoba (unreported) pgs.6, 7&8.

¹² Havyalimana Azaria and two others vs. Republic, cited supra, Marko Patrick Nzumila and another vs Republic, Criminal Appeal No. 141 of 2010, CAT, (unreported), Kigundu Francis Jackson Mussa vs Republic, Criminal Appeal No.314 of 2010 CAT Mwanza (unreported)

¹³ Elias Mtati@Ibichi v R, Cr.Apl.No.65 of 2014 CAT (unreported) pg.13



*that places an appeal court to be satisfied that indeed he fully understood the charge.*¹⁴

2.1.7 Steps to follow where the accused pleads guilty

In ***Adan v. Republic***¹⁵ the Court stated that,

When a person is charged,

- (i) The charge and the particulars should be read out to him, so far as possible in his own language, but if that is not possible, then in a language which he can speak and understand.
- (ii) The magistrate should then explain to the accused all the ingredients of the offence charged.
- (iii) If the accused then admits all those essential elements; the magistrate should record what the accused has said, as nearly as possible in his own words, and then formally enter a plea of guilty.
- (iv) The magistrate should next ask the prosecutor to state the facts of the alleged offence and, when the statement is complete, should give the accused an opportunity to dispute or explain the facts or to add any relevant facts.

¹⁴ Section 228(2) of the CPA, *Wamithandi v Republic* 3 EALR 1010, *Republic v Yonasani Egalu and others* [1965] 9 EACA 65, *Stanley Murithi Mwaura vs Republic*, Criminal Appeal No. 144 of 2019, CAT (unreported),

¹⁵ *Adan v. Republic* [1973] 1 EA445 & 46, *Sokoine Mtahali @chimongwa vs Republic*, Criminal Appeal NO.459 of 2018 CAT (unreported) pg.10



- (v) If the accused does not agree with the statement of facts or asserts additional facts which, if true, might raise a question as to his guilt, the magistrate should record a change of plea to "not guilty" and proceed to hold a trial.
- (vi) If the accused does not deny the alleged facts in any material respect, the magistrate should record a conviction and proceed to hear any further facts relevant to sentence (aggravating & mitigating factors).
- (vii) The statement of facts and the accused's reply must, of course, be recorded."

It was also stated in the case of ***Hando s/o Akunaay vs Republic***¹⁶ that,

After the charge has been read over to the accused person and enters a plea of guilty which is not equivocal, the Magistrate shall record it as nearly as possible in the words he uses, convict him and pass sentence upon or make an order against him, unless there appears to be sufficient cause to the contrary. See also in ***Joseph Mahona @ Joseph Mboje @ magembe Mboje vs Republic***.¹⁷

¹⁶ Hando s/o Akunaay vs Republic (1951) 18 EACA 307. See Eliko Sikujua and Another vs Republic, Criminal Appeal No.367 of 2015, CAT (Unreported), Republic v Yosani Egalu and others,[1965] EACA 65.

¹⁷ Joseph Mahona @ Joseph Mboje @ magembe Mboje vs Republic, Criminal Appeal NO.541 of 2015 CAT Tabora (Unreported), Hando Akunay vs R (1951) 18 EACA 307, Chada Wambura vs R (1953) 29 EACA 339, John Faya vs R, Criminal Appeal No.198 of 2007 (unreported), Ambakisye Mwaipungu vs R, Criminal Appeal No. 133 of 2010 (unreported). R. v Yohasani Egalu and others (1942) 9 EACA 69 at pg.67



2.2 CATEGORIES OF PLEA

The following are categories of pleas the accused person may enter, manner of recording and effects thereof;

2.2.1 Unequivocal plea of guilty

A plea of guilty is said to be “**unequivocal**” when the accused clearly admits to all the ingredients of the offence he stands charged after the charge has been read over and explained to him.¹⁸

For a plea to be unequivocal, it must be voluntary and free from ambiguity and must show during the time when the accused made it that he understood and appreciated the nature of the charge. If circumstances show that he did not appreciate the nature of the charge or did not intend to admit that he was guilty, or that he admitted facts he could not in law have been convicted of the offence charged, it will be said to have not been absolute and may be overturned in appeal.¹⁹

In any case where a conviction is likely to proceed on a plea of guilty, it is most desirable not only that every constituent of the charge should be explained to the accused, but that he should be required to admit or deny every constituent thereof, and that what he says should be recorded in a form which will satisfy an appeal court that he fully understood the charge and pleaded guilty to every element of it unequivocally.²⁰

¹⁸ *Bukenya v Uganda* (1967) EA 341

¹⁹ *Khalid Athumani vs Republic* [2006] TLR 79 CA

²⁰ *Yonesani Egalu and others* [1942] EACA 65,



(a) Test for unequivocal plea of guilty

In *Amani Yusuph vs Republic*,²¹ quoting *Michael Adrian Chaki v R*,²² the Court has emphasized the position that, in order for an unequivocal plea of guilty to be valid, the following conditions, taken as its test, must conjunctively meet the following conditions:-²³

- (i) 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,
- (ii) 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.
- (iii) When the accused is called upon to plead to the charge, the charge is stated and fully explained to him before he is asked to state whether he admits or denies each and every particular ingredient of the offence. See **section 228(1) CPA and R.v. Yonasani Egalu (supra)**.²⁴

²¹ Amani Yusuph v Republic, Criminal appeal No.124 of 2019

²² Michael Adrian Chaki v R, Criminal Appeal No.399 of 2019 CAT DSM (unreported)

²³ Richard Lionga@Simageni v R, Criminal Appeal No.14 of 2020 CAT DSM (unreported), Rex vs Folder (1923) 2 KB 400, Keneth Manda v Republic [1993]TLR 107, Ismail Bushaija v Republic [1986], Laurent Mpinga vs Republic [1983]TLR 166, Kato v R [1971]E.A 542, R.v. Yonasani Egalu (supra)

²⁴ Yonasani Egalu and others [1942] EACA 65,



- (iv) The facts adduced after recording a plea of guilty should disclose and establish all the elements of the offence charged.
- (v) 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 v R [1987] TLR 92***),
- (vi) 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 the elements of the offence charged.

(b) Tendering exhibits during plea

Case laws have established that, where the accused pleads guilty of an offence unequivocally, it is not a requirement of law to tender exhibits to support the charge.²⁵ Generally, exhibits under such circumstances may be tendered where need be. And when they are tendered, the tendering is not anything to do with proving what has been pleaded for since such plea alone is enough to convict the accused person.

It is however necessary for the prosecutor to tender exhibits at this stage where there is a need for court order of disposal (*emphasis mine*).

²⁵ Frank Mlyuka v. R, Criminal Appeal No 404 of 2018, Onesmo Alex Ngimba v R, Cr.Appl No.157 of 2019 CAT Mbeya (unreported), Laurence Mpinga vs Republic, (1983) TLR 166, Joel Mwangambako vs Republic, Criminal Appeal No. 516 of 2017, CAT Mbeya (unreported), Samson Bwire vs Republic, Criminal Appeal No. 91 of 2018 CAT Shinyanga (unreported).



2.2.2 Equivocal plea of guilty

An **equivocal plea** simply means an ambiguous or vague plea. This is a plea which is not clear as to whether the accused admits or denies the truth of the charge.²⁶

An example is when the accused pleads “**it is true**”, “**I admit it**”, “**that is correct**” or other related words without further detailing as to what exactly he is admitting.

In *Musau s/o Muya v R (1962) E.A.643*²⁷ the court held that, the the word “**nilikosa**” meaning “**I have done wrong**” by itself should not be treated as unequivocal plea of guilty without enquiry as to what it was that the appellant admitted he had done. Before accepting a plea of guilty, the court must be satisfied that the accused’s reply is nothing but a clear admission of guilty, otherwise it will be equivocal.²⁸

In *Peter Kombe vs D.P.P.*²⁹ when the charge was read over to the accused person, he replied “**it is true**” without further elaborations as to what he means to be true. In appeal, the court held that, the words “**it is true**” when used by an accused are too general to amount to a plea of guilty.

²⁶ Hyansit Nchimbi vs Republic, Criminal Appeal No. 109 of 2017, Court of Appeal of Tanzania, CAT (unreported), Josephat James vs Republic, Criminal Appeal No. 316 Of 2010, CAT (unreported), Jelada Chuma vs Republic, Criminal Appeal No.114 of 2016 CAT(unreported), Michael Adrian Chaki vs Republic, Criminal Appeal No. 399 of 2019 CAT (unreported), Ndaiyai Petro vs Republic, Criminal Appeal No.277 of 2012 CAT(unreported), Deus Gendo vs Republic, Criminal Appeal No. 480 of 2015 CAT (unreported)

²⁷ Musau s/o Muya v R (1962) E.A.643

²⁸ DPP v Paul Reuben Makunjaa [1992] TLR 2

²⁹ Peter Kombe vs D.P.P Cr. Appeal No.12 of 2016, CAT Mbeya (unreported), & Burete Peter v Rep,Cr. Appeal No. 20 of 2010 CAT (unreported)



Whenever the accused enters an equivocal plea, the court should record a plea of not guilty and proceed on with preliminary hearing as if he initially disputed the charge.

2.2.3 Plea of not guilty

This refers to a denial of the charge by the accused. Common words used include “**it is not true**”, “**it is a lie**” “**I am not guilty**” and so on. Pursuant to *section 228 of the CPA*, a plea of not guilty may be recorded in circumstances falling under the followings:-

- (i) Where an accused does not admit the charge.
- (ii) Where the accused does not admit the statement of facts. Even where it was believed that he admits the charge, if facts are read over to him and he denies any of them, the Magistrate records a change of plea from plea of guilty to plea of not guilty.
- (iii) Where the accused refuses to plead.
- (iv) Where the accused stands mute of malice or where by reasons of infirmity cannot answer directly.
- (v) Where the court tries whether the accused is of sound mind.

Practically, where the accused person does not admit the truth of the charge, the next stage is to conduct a preliminary hearing pursuant to ***section 192(1) of the CPA***.



Where it turns out that although the accused initially denied the charge, but after reading facts for preliminary hearing admits to all, the court may proceed on to convict him if the facts so read out, disclosed all elements of the offence charged, and if it is on the opinion of the court that he understood the nature of all that has been read over to him.

But where after reading of facts for preliminary hearing, he persists on to deny the allegations, a memorandum of undisputed facts will be signed and require the prosecution to call witnesses to prove the disputed facts.³⁰

2.2.4 Plea of guilty by co-accused

As was stated by SAMMATA J, as he then was in **Saidi Hatibu v R**,³¹ where there is more than one accused jointly charged for the offence or for different offences arising out of the same transaction, the plea of each of them should be recorded separately and individually, and if a charge contains several counts, each accused must be asked to plead to such counts separately and individually.

In the even that one or some of them plead guilty to one or more of the offences, the Magistrate may convict and sentence those who plead guilty and proceed to try the others who persist with a plea not guilty.³²

³⁰ Section 192 of the CPA

³¹ Saidi Hatibu v Republic [1984]TLR 280

³² Karuma Bukunya v Republic[1952] 19 EACA 23.



As was stated in *R v Ismael*,³³ where there are **multiple accused persons**, one of whom could not be guilty without the other, **extra caution** should be taken in accepting a guilty plea from one person where another denies the charges. Some circumstances may require adjourning the sentence against one who pleaded guilty pending determination of a case against the one who pleaded not guilty. A good example is in the charge of affray; where one accused pleads guilty and the other does not, a plea of not guilty should be entered against both because if one accused is convicted on his own plea of guilty and the full trial of the other ends in acquittal, then the conviction of the other cannot stand if the evidence shows that only two persons were involved in the affray.

2.2.5 Plea in a charge with several counts

Where a charge contains several offences, the court should record a plea on each count separately in order to ensure determination of plea on each individual offence/count. Where the accused person pleads guilty to one or some of those offences, the Magistrate may convict and sentence him on those he pleaded guilty and proceed to try him on the others he persists with a plea of not guilty.³⁴

(a) The impact of an own plea of guilty

Generally, pursuant to **section 360(1) of the CPA**, a person convicted of an offence on his own plea of guilty is barred from appealing against conviction, except as to the extent or legality of the sentence imposed.

³³ *R v Ismael* [1968] EA 609 (T).

³⁴ Saidi Hatibu (supra)



In other scenarios, it was stated in ***Republic v Fulabhai Patel and another***³⁵ that, once sentence has been passed upon an accused person who has unequivocally pleaded guilty to a charge, he cannot afterwards be allowed to retract that plea unless he pleaded guilty to a charge which in fact disclosed no offence.

In ***Laurent Mpinga v R***³⁶, and several other case laws, the followings are acceptable criteria for a person who was convicted on his own plea of guilty to appeal to an appellate court successfully.

- (i) If the appeal is against the extent or legality of the sentence.
- (ii) 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.³⁷
- (iii) Where circumstances show that, the appellant did not appreciate the nature of the charge or did not intend to admit he was guilty of it³⁸ or

³⁵ Republic v Fulabhai Patel & another, [1946] 13 E.A.C.A 179,

³⁶ Laurent Mpinga V R (1983) TLR 166, Isaya David Mangleza Chanzi vs R Criminal Appeal No. 349 of 2017 CAT (unreported) pg.6, Ramji Mhapa v Republic, Criminal Appeal No. 88 of 2014 CAT (unreported pg.8), Rex v Folder (1923) 2 KB 400 as quoted in the case of Khalid Othumani v Republic, Criminal Appeal No. 103 of 2005 (unreported), and Said Mswaje @ Mwanalushu V Republic, Criminal Appeal No. 464 of 2007, CAT (Unreported),

³⁷ Ndhokubwayo Emmanuel vs Republic, Criminal Appeal No.300 “B” of 2011 CAT (unreported) pg.7

³⁸ Rashidi Nzovu vs R Criminal Appeal No. 545 of 2016 CAT Tanga (unreported) pg.5, Ngasa Madina v R Criminal Appeal No. 151 of 2005 CAT (unreported) and Khalid Athumani v Republic [2006] TLR 76



- (iv) That he pleaded guilty as the result of a mistake or misapprehension.
- (v) That the charge laid at the appellant's door discloses no offence known to law.
- (vi) That upon the admitted facts, he could not in law have been convicted of the offence charged.

2.2.6 Pleas of “autrefois acquit”

The plea of *autrefois acquit* (a former acquittal), is grounded on the universal maxim of the common law of England, that no one is to be brought into jeopardy of his life or limb more than once for the same offence he was formally acquitted.³⁹

In a simple language, it is a bar to charge a person with the same offence which he was previously charged by a competent court and acquitted. The governing provision for this principle is *Section 228(5) (a) (i) of the CPA*.⁴⁰

2.2.7 Pleas of “autrefois convict”

The plea of *autrefois convict* is the rule against double jeopardy, grounded on the principle that, no man ought to be twice brought in danger of his life for one and the same crime which has previously been adjudicated by a court of competent jurisdiction and convicted him. i.e ***Nimo Bis Debet Puniri pro Uno Delicto***. Since a court of competent jurisdiction has previously convicted such a person on such same offence, he has already paid

³⁹ Double jeopardy Rule, House of commons commentary pp.335-6

⁴⁰ Godison Ndobho v Republic [1993]TL 287, Republic v Msusa Ally [1987] TLR 190, Twaha Hussein v R, Criminal Appeal No.415 of 2017 CAT Mwanza (unreported),



the price of his guilty and it will not be fair to punish him again for the same.⁴¹

HOWEVER, this rule does not protect a person from being prosecuted for a different offence originating from the same facts, as was stated in ***Republic v Msusa Ally***,⁴² where an accused person was charged and convicted of assault causing actual bodily harm. Later on the victim died of the same assault and was again charged with murder. He attempted to raise the defence of autrefois convict but was barred since his previous conviction was not on murder, but assault causing actual bodily harm which is a distinct offence though they originate from the same transaction.

In the case of ***Maduhu Masele v Republic***,⁴³ it was further stressed that, it is the duty of the accused to raise the plea of autrefois acquit or convict at any time before closure of defence case, and as a general rule, the burden of proof is upon him who asserts it.

2.2.8 Doctrine of issue estoppel

The principle of issue estoppel occurs where an issue of fact has been tried by a competent court on a former occasion and a finding has been reached in favour of an accused, such a finding would constitute an estoppel against the prosecution, not as a bar to the trial and conviction of the accused for a different and distinct offence but as precluding the reception of evidence to disturb that finding of fact when the accused is tried subsequently even for a different offence which might be permitted by law.⁴⁴

⁴¹ Double jeopardy Rule, House of commons commentary pp.335-6

⁴² Republic v Msusa Ally [1987] TLR 190

⁴³ Maduhu Masele v Republic [1991] TLR 143

⁴⁴ Issa Athumani Tojo v R [2003] TLR 199.



Example: A witness attempted to tender a cautioned statement, an objection raised, an inquiry is conducted and the court makes a finding that the same was not recorded in the environment of voluntariness. The prosecution cannot use that same cautioned statement against the same accused even for a different offence charged subsequently; they are estopped from disturbing that finding of the court with regards to voluntariness of the statement.

In order to invoke the doctrine of issue estoppel the parties in the two trials must be the same and the fact-in-issue proved or not in the earlier trial must be identical with what is sought to be reagitated in the subsequent trial.⁴⁵

The principle is different from autrefois principle in the sense that, autrefois principle prevents the prosecution from impugning the validity of the verdict as a whole; issue estoppel prevents raising again any of the separate issues of fact which have been decided. The purposes of the Doctrine of issue of estoppel include:-⁴⁶

- 1) Avails fairness to the accused who should not be called upon to answer questions already determined in his or her favour;
- 2) The integrity and coherency of the criminal law
- 3) The institutional values of judicial findings and economy.

⁴⁵ State of Andhra Pradesh v Kokkilaada Meerayya and Another (1968) INSC 300, AIR 1970 SC 771

⁴⁶ Julius Michael and others Vs Republic, Criminal Appeal No.264 of 2014 CAT Arusha (unreported), DPP vs Ashamu Maulid Hassan and others Criminal Appeal No.37 of 2015, Issa Athumanl Tojo vs Republic, Criminal Appeal No.37 of 2015, CAT Dar Es Salaam (unreported).



2.1.9 Plea of Presidential Pardon

A pardon is a common law extra-judicial power which is exercised by the Crown under the Royal Prerogative of Mercy.⁴⁷ In Tanzania it can be defined as a Presidential decision to relieve a convict or prisoner of some or all of the legal consequences resulting from a criminal conviction. It is a forgiveness which exempts a convict or prisoner from a particular punishment.

Article 45(1) (a)-(d) of the Constitution of the United Republic of Tanzania designates the President as the only person with the power to grant pardons.

A person cannot be tried for a criminal offence if he shows that he had been pardoned for that offence by the President.⁴⁸ He can reply to the charge that he has already been pardoned by the President on that offence, and thereafter the provision of **section 228(5) (b) of the CPA** shall apply.

2.2.10 Change of plea

The accused person is permitted to amend his earlier plea at any time of the trial before sentence is imposed.⁴⁹

⁴⁷ The Royal Prerogative of Mercy, 2015 & see R v Foster (Barry) [1985] QB 115; [1984] 3 W.L.R. 401]

⁴⁸ Momanyi Bwonwong'a, Procedures in Criminal Law in Kenya. Nairobi: East African Education Publishers Ltd, 1994 pp.87

⁴⁹ Masumbuko Josedph vs republic, Criminal Appeal No. 218 of 2014, CAT (unreported), Ally Shabani @ Swalehe vs Republic, Criminal Appeal No. 351 of 2020, CAT, (unreported), Shehe Ramadhani @ Idd vs Republic, Criminal Appeal No. 82 of 2020, CAT, (unreported), Chacha v Republic, [1953] EACA 339, Kamundi v Republic, [1953] EA 378, Joseph Mugola Pudha v Republic (1952) EACA 55



In ***Maumba v R***⁵⁰ it was stated that, a Magistrate's powers to allow amendment of pleas exists only during trial, before conviction and before the court becomes *functus officio* (*functus officio comes when final order or sentence has been pronounced thereby preventing the court from re-opening the case*).

In ***Chacha v Republic***,⁵¹ the court held that, if after pleading guilty to a charge, discussion follows and the accused intending for any reason to amend his plea, the charge should be read to him afresh whereupon his new plea shall be recorded.

Similarly, in ***Kamundi v Republic***,⁵² the court held that, a magistrate has a judicial discretion to allow a change of plea before passing sentence or making an order finally disposing of the case.

2.2.11 Plea as a bar to lack of jurisdiction

Jurisdiction of courts is a creature of statute and not what the litigants like or dislike. It may vary due to the subject matter, level of the Court and geographical area where the offence was committed. Adjudicating a case which the Court has no jurisdiction renders its judgment a nullity.⁵³

The accused may therefore plead lack of jurisdiction on a charge leveled against him. A simple example is when after the charge has been read over to him and asked to

⁵⁰ *Maumba v R* (1966) EA 167, see also *Kamundi v R* [1973] EA 540

⁵¹ *Chacha v Republic*, [1953] 20 EACA 339

⁵² *Kamundi v Republic*, [1953] EA 378 and *Joseph Mugola s/o Pudha v Republic* EACA Cr.App 55 of 1952

⁵³ *Omary Athumani@Magari and others vs. Republic*, Criminal Appeal No. 173 of 2016 CAT Dar Es Salaam (unreported).



plead, he replies to the court that “**Your Honour, this court lacks jurisdiction to entertain my case**”. The famous case of **Desai v Warsama**,⁵⁴ emphasized the principle that;-

“No court can confer jurisdiction upon itself, and where a court assumes jurisdiction and proceeds to hear and determine a matter not within its jurisdiction, the proceedings and the determination are nullities.”

According to **sections 4(1) and 5(1) of the MCA**, a District Court has jurisdiction in which it is established, likewise, a Resident Magistrate Court can exercise jurisdiction in such areas as may be specified in the order of the Gazette by the Chief Justice. Therefore, each court has to observe its boundaries as far as the subject matter, level of the court and territorial authority are concerned.⁵⁵

In **Sharma v R** ⁵⁶ it was emphasized that, proof of place of commission of offence is essential to the prosecution’s case and that although it is not always capable of exact proof, evidence should be led on which the necessary inference can be drawn.

2.2.12 Plea Bargaining

Pursuant to *section 2 of the CPA*, plea bargaining is a negotiation in a criminal case between a prosecutor and the accused whereby the accused agrees to (a) plead guilty to a particular offence or a lesser offence or to a particular count or counts in a charge with multiple counts; or (b) cooperate with the prosecutor in the

⁵⁴ Desai v Warsama [1967] E.A 351

⁵⁵ Omary Athumani@Magari and others (supra), Ramadhani Omary Mtiula v R, Criminal Appeal No.62 of 2019 CAT Iringa (unreported).

⁵⁶ Sharma v R 20 EACA 310



provision of information that may lead to a discovery of other information relating to the offence or count charged, in return for concession from the prosecutor which may lead to a lenient sentence or withdrawal of other counts.

Plea bargaining is still a new practice in the Tanzania legal system, as it has been introduced recently in 2019 via *Written Laws (Miscellaneous Amendment) Act No.4 of 2019* which introduced into the CPA sections 194A, 194B, 194C, 194D, 194E, 194F and 194G.

For a detailed explanation of procedures on how to handle plea bargaining in Tanzania, the reader is advised to visit the “*National Prosecutions Service, Plea Bargaining Guidelines*”, as may be updated from time to time. This part will only discuss it briefly just to enlighten on the basics.

(i) Initiating a Plea Bargaining

Plea bargaining may be initiated at any time in the following circumstances:-⁵⁷

- (1) when there is a pending case before the court
- (2) Before closure of prosecution case
- (3) After closure of prosecution case subject to approval by the DPP.

(ii) Who may initiate Plea Bargaining?

Pursuant to **section 194A (2) of the CPA**, plea bargaining may be initiated by any of the following persons:-

⁵⁷ National Prosecutions Service; Plea Bargaining Guidelines, 2022 pg 3



- (1) The accused person or his advocate
- (2) The prosecutor
- (3) Where the case involves a child in conflict with the law, his parent, guardian or social welfare officer

(iii) Registration of plea agreement

After plea agreement has been concluded, the court may register it after having been satisfied that it was voluntarily obtained and the accused was competent to enter into it.

The court may pronounce a decision based on plea agreement or make such other orders as it deems necessary including an order to reject the plea agreement for sufficient reasons, except that, such rejection shall not operate as a bar to any subsequent negotiations preferred by the parties.⁵⁸

Where the court accepts the plea agreement, it shall become binding upon the parties and the agreement shall become part of the record. The court may further convict the accused where the agreement was entered in accordance with *sections 194A and 194B* but shall sentence him according to what has been agreed in the plea agreement notwithstanding the sentence specified by the provisions of the applicable law.

(iv) Termination of plea Bargaining agreement

Plea bargaining agreement may be terminated by the parties who entered into it at any time, by stating the reason thereof in writing. The termination however does

⁵⁸ Section 194D of the CPA



not bar either party from re-initiating the plea bargaining provided that he assigns good cause. The reasons for termination may include the followings:-

- (1) Death of the accused person
- (2) Lapse of the time required to complete negotiation
- (3) Withdrawal by either party. The accused's side may change intention of negotiation, likewise the prosecutor may withdraw it when it comes to his knowledge that some material facts have been concealed or misrepresented by the accused with the intention of misleading the plea bargaining.

(v) Accused's right to legal Representation

In Tanzania, the right to legal representation in offences other than those which attract capital punishment is not automatic. The person in need of it has a duty to either engage an advocate or apply to court for legal aid in terms of **section 33 of the Legal Aid Act, [CAP 21 RE 2019]**.

But in cases where the accused person is a child, **section 33(2) of Cap.21**, requires the Magistrate to certify that he ought to have legal aid in order for the advocate to be assigned to him.⁵⁹

⁵⁹ Mashaka Marwa v Republic, Criminal Appeal No.138 of 2018 CAT Mwanza (unreported), Makenji Kamura vs Republic, Criminal Appeal No. 30 of 2018, Court of Appeal of Tanzania, Mwanza (unreported), Manyinyi Gabriel @ Gerisa vs Republic, Criminal Appeal No.594 of 2017 CAT Mwanza (unreported), Maganga Udugali vs Republic, Criminal Appeal No.144 of 2017 CAT,Tabora (unreported).







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