



REPUBLIC OF KENYA



KENYA LAW
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**Maguche v State (Criminal Appeal 75 of 2022)
[2023] KEHC 1462 (KLR) (23 February 2023) (Ruling)**

Neutral citation: [2023] KEHC 1462 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISII
CRIMINAL APPEAL 75 OF 2022
CW GITHUA, J
FEBRUARY 23, 2023**

BETWEEN

MAKORI MAGUCHE APPLICANT

AND

STATE RESPONDENT

*(From original conviction and sentence in Criminal Case
No.205 of 2022 of the Chief Magistrate's Court at Kisii)*

RULING

1. Learned counsel for the applicant, Mr. W.M. Nyang'acha instructed by Ms. Nyang'acha & Associate Advocates presented before this court an application for revision vide letter dated 2nd March, 2022. The application seeks revision of the trial court's proceedings recorded on 17th February 2022 to determine the propriety and legality of the plea of guilty entered against the applicant in Kisii Criminal Case No. E205 of 2022.
2. It is the applicant's case that the plea of guilty entered against the applicant was equivocal as it did not pass the test of the legal principles applicable to plea taking as enumerated in the celebrated case of *Adan v Republic* [1973] EA 445 and in section 207 of the Criminal Procedure Code which counsel reproduced in the application.
3. Learned counsel further contended that the charge preferred against the applicant and its essential elements were not read over and explained to him in a language he understood; that he was not informed of the consequences of pleading guilty which as held in *Bernard Injendi v Republic* [2017] eKLR was a requirement in all cases where an accused person pleaded guilty; that the applicant was not asked to indicate the language of his choice and if it required interpretation, there was no evidence of the person who did the interpretation. Lastly, it was claimed that the applicant was not informed of his right to legal representation as provided for in the constitution.



4. In view of the foregoing, learned counsel invited the court to find that the plea of guilty entered against the applicant was not unequivocal and the applicant's resultant conviction was thus irregular, improper and illegal as it amounted to violation of his right to a fair trial and ought to be revised.
5. The court record shows that although the application was mentioned several times before Hon. Ougo J awaiting availability of the lower court file, it was mentioned before me for the first time on 15th December 2022 and upon considering the nature of the orders sought to be reviewed, I exercised the powers donated to this court by Section 365 of the *Criminal Procedure Code* (C.P.C) and decided to determine the application without hearing any of the parties.
6. Having considered the application, I find that it invokes the revisional jurisdiction of this court which is conferred by Section 362 as read with Section 364 of the C.P.C. Section 362 of the C.P.C. empowers this court to call for and examine the record of the lower court to satisfy itself as to the correctness, legality or propriety of any order or finding made by the trial court or the regularity of the trial court's proceedings and if satisfied that there was an error, illegality or impropriety in the impugned order or proceedings, the court is mandated to grant any of the reliefs set out in Sections 364 of the C.P.C.
7. Section 365 (5) of the C.P.C however bars this court from entertaining an application for revision from an applicant who had a right of appeal against the order sought to be reviewed but who had chosen not to exercise that right.

I will reproduce the aforesaid provision for the avoidance of doubt. It reads as follows:

“When an appeal lies from a finding, sentence, or order, and no appeal is brought, no proceeding by way of revision shall be entertained at the insistence of a party who should have appealed.” (Emphasis added).

8. In this case, the applicant on whose behalf the instant application was filed was the accused person in Kisii Criminal Case No. E205 of 2022. It is clear from the trial court's proceedings recorded on 17th February 2022 that he was convicted on his own plea of guilty on the said date for the offence of perjury contrary to Section 108 (i) (a) as read with Section 110 of the *Penal Code*. Upon conviction, he was sentenced to serve eighteen (18) months imprisonment.

The gravamen of the applicant's grievances as espoused in the instant application is that his plea of guilty was not unequivocal as the learned trial magistrate did not strictly comply with the procedure of plea taking stipulated in Section 207 of the C.P.C. and the principles set out in the case of *Adan v Republic* (supra).

9. Having been the accused person in the trial court and the subject of the impugned conviction, the applicant had an automatic right of appeal to the High Court and he therefore squarely fell into the category of persons whose application for revision are expressly excluded from consideration by this court. Since the applicant was clearly aggrieved by the manner in which his plea of guilty was entered and his subsequent conviction, he ought to have exercised his right of appeal and appealed against his conviction instead of filing the instant application.
10. In view of the foregoing, I do not find merit in the application and it is hereby dismissed.

It is so ordered.

DATED, SIGNED AND DELIVERED AT KISII THIS 23RD DAY OF FEBRUARY 2023.

C.W. GITHUA

JUDGE



In the presence of:

No appearance for the Applicant

No appearance for the State

Ms. Aphline Court Assistant

