



**Mwangi v Republic (Criminal Appeal E029 of 2022)
[2023] KEHC 26694 (KLR) (20 December 2023) (Judgment)**

Neutral citation: [2023] KEHC 26694 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
CRIMINAL APPEAL E029 OF 2022
WM MUSYOKA, J
DECEMBER 20, 2023**

BETWEEN

STEPHEN MWANGI APPELLANT

AND

REPUBLIC RESPONDENT

(Appeal from conviction and sentence by Hon. Mrs. Lucy Ambasi, Chief Magistrate, CM, in Busia CMCCRC No. E670 of 2022, of 22nd June 2022 and 5th July 2022, respectively)

JUDGMENT

1. The appellant, Stephen Mwangi, had been charged before the primary court, of resisting arrest, contrary to section 103(a) of the *National Police Service Act*, No 11A of 2011, Laws of Kenya. The particulars were that on 21st June 2022, at Shell Petrol Station, Malaba, in Teso North Sub-County within Busia County, he resisted arrest by No 234976 Chief Inspector Richard Oeri and No 237610 Inspector of Police Fredrick Maraka, police officers in lawful execution of their duties.
2. The plea was taken on 22nd June 2022. The record reflects that the charges were read to the appellant in English/Kiswahili, to which he responded in Kiswahili, “Kweli.” The facts were read to him, to effect that he was overlapping other vehicles, and when stopped by the police, he locked himself in the cabin of the lorry that he was driving, and refused to get out, and when he eventually got out, he ran away, and he was arrested only after the police gave chase, and caught up with him. He confirmed those facts by stating, “Ni kweli.” He was convicted on his own plea of guilty, after which he made a statement in mitigation. He was sentenced, on 5th July 2022, to a fine of Kshs 500,000.00 or 5 years in prison.
3. The appeal herein arises from that conviction, and it is principally against the sentence. The appellant avers that he pleaded guilty, was a first offender, he did not understand the gravity of the offence, was acting under the influence of alcohol, he was undertaking to abide by all laws and regulations if his



- plea was allowed, he was remorseful, he was undertaking to not repeat the offence, and his family was suffering as he was the sole breadwinner.
4. The appeal was canvassed by way of written submissions, following directions given on 2nd November 2023.
 5. The submissions by the appellant turn around the same issues. He submits that he had regretted the offences and accepted responsibility by pleading guilty; he was a first offender, who acted out of alcoholism, was remorseful and was undertaking to be obedient to the law in future. He prays that he be considered for a non-custodial sentence.
 6. The respondent has cited section 348 of the *Criminal Procedure Code*, Cap 75, Laws of Kenya, to argue that a person who has pleaded guilty can only appeal against the sentence, to the extent of its legality. *Olel v Republic* [1989] KLR 444 is cited, to support that, where it was said that where the plea is unequivocal, an appeal against conviction ought not lie. *Alexander Lukonye Malika v Republic* [2015] eKLR is also cited, where it was stated that where the plea is imperfect, ambiguous or unfinished, or the accused was mistaken or under misapprehension, or the charge as laid out did not disclose an offence known in law, or where upon the admitted facts the appellant could not be convicted in law, the appellate court may set aside the conviction. It is submitted that the plea was unequivocal, as the offence of resisting arrest was disclosed in the facts read out in support of the charge. It is also submitted that the manner the plea-taking was handled made the trial fair, as it complied with Article 50(2)(b) of the *Constitution*, and section 207 of the *Criminal Procedure Code*, Cap 75, Laws of Kenya. Finally, it is submitted that the sentence was lawful.
 7. As indicated above, the appellant does not appear to have an issue with the conviction as such, and he seeks largely to have the appellate court revisit the sentence. His grounds of appeal read more like a statement in mitigation, and so does his written submissions.
 8. I am satisfied that the plea was taken in a fairly straightforward manner. The appellant does not claim not to have understood the charge, or that it was read and explained to him in a language that he was not familiar with, he only complains that he was not warned of the danger of pleading guilty. I doubt whether the mere fact that the charge had stiff consequences, alone, should be basis for vitiating a plea of guilty, where the trial court took the plea following the correct procedure, in which process the appellant chose or decided to plead guilty. There is nothing ambiguous about the charge, or the facts as read out, upon which I can conclude that the plea was equivocal.
 9. Regarding the sentence imposed, I note that the provision under which he was charged and convicted, section 103(a) of the *National Police Service Act*, prescribes a fine not exceeding Kshs 1,000,000.00 or imprisonment for a term not exceeding 10 years. He got a fine of Kshs 500,000.00 or 5 years in jail in default. The sentence imposed was within the range, and the trial court had the discretion. On whether I should put him on a non-custodial programme, I note that the principal sentence is non-custodial, a fine, and that the imprisonment is in default of the fine.
 10. However, the trial court should have exercised a measure of leniency, given that the appellant had pleaded guilty, and, with no previous records being availed, he should have been treated as a first offender. He has expressed remorse. There appears to be some credence, to his claim that he was intoxicated with liquor, at the material time, and it appears that he had sobered up enough, as at the time of arraignment, to express regret for his actions. On those grounds, I shall consider revising the sentence, which I hereby do, to a fine of Kshs 100,000.00, or imprisonment for a term of 12 months, in default, effective from the date of conviction.



11. There is no merit in the appeal, on conviction, and I accordingly dismiss it, and affirm the conviction. I have revised the sentence, on the terms set out above. The appeal is disposed of in the foregoing terms. It is so ordered.

DELIVERED, DATED AND SIGNED IN OPEN COURT AT BUSIA THIS 20TH DAY OF DECEMBER, 2023.

W MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant.

Mr. Stephen Mwangi, the appellant, in person.

Advocates

Ms. Chepkonga, instructed by the Director of Public Prosecutions, for the respondent.

