



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KERICHO

CRIMINAL APPEAL NO.E009 OF 2020

EDWIN CHERUIYOT ONDIEK.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an appeal from the conviction and defence by Hon. G. O. Kimanga (SRM)

in Kericho CMCC NO.1710 of 2019 delivered on 2/5/2019)

JUDGMENT

1. The Appellant was charged with stealing of Motorcycle contrary to Section 278A of the Penal Code.
2. The particulars and facts of the case were that on the 27/4/2019 at about 1530 HRS at Chemomit Village Sererut Location in Kericho West Sub County stole one motor cycle registration number KMET 084U make Boxer BM 100 Blue in colour valued at Kshs 95,000, the property of one Philip Kiprotich Kerich.
3. The facts of the case were that on 7/4/2019 at 4 p.m the complainant had parked motorbike KMET 084V in front of his house after his normal work. He was in his house and his wife was near the door. The Accused Person approached the bike and attempted to operate it. It was locked. The Accused Person cut some wires to unlock it. The wife raised an alarm. She called the husband who came out to see. The accused tried to take off. The Complainant gave chase raising alarm and the public arrested him. The Accused Person was arrested and the motorbike recovered. He was charged.
4. The Appellant pleaded guilty to the charge and he was convicted on his own plea of guilty and sentenced to seven (7) years imprisonment.
5. The Appellant has now appealed against the conviction and sentence on the following amended Grounds of Appeal:-
 - (i) THAT the Trial Court did not warn the Appellant on the repercussions of pleading guilty.
 - (ii) THAT the plea of guilty was as a result of coercion.
 - (iii) THAT the Appellant was not subjected to a fair trial in accordance with Article 50 of the Constitution of Kenya, 2010.
6. The parties filed written submissions as follows:-
7. The Appellant submitted that the trial court never warned him of the repercussions of pleading guilty as he was unrepresented and was not an expert in matters of law and the court process.
8. The Appellant submitted that the investigation officer took advantage of his innocence and coerced him to plead guilty on the promise of being set free.
9. The Appellant submitted that he was not subjected to a fair trial and that seven (7) years imprisonment was excessive.
10. The Respondent submitted that the plea taking process was proper in law, it was done in Kiswahili a language that the appellant understood, and he pleaded guilty. The facts were read by the prosecution and the exhibits produced, the appellant confirmed that the facts

were true.

11. The Respondent submitted that the appellant had not demonstrated that the manner in which the plea of guilty was recorded occasioned failure of justice.

12. The Respondent submitted that the sentence of seven (7) years imprisonment was proper and lawful as it was provided for under section 278 A of the Penal Code.

13. The Appellant pleaded guilty and he is not entitled to appeal except on sentence.

14. Section 348 of the Criminal Procedure Code CAP 75 bars appeals from subordinate courts where an accused was convicted upon his own plea of guilty except on the extent and legality of sentence by providing that:-

“No appeal shall be allowed in the case of an accused person who has pleaded guilty and has been convicted on that plea by a subordinate court, except as to the extent and legality of the sentence.”

15. In the case of *Olel vs. Republic [1989] KLR 444*, it was held that; ***“Where a plea is unequivocal, an appeal against conviction does not lie. Section 348 of the Criminal Procedure Code (cap 75) does not merely limit the right of appeal in such cases but bars it completely.”***

16. The manner of recording of a plea is provided for in section 207(1) and (2) CAP 75 of the Criminal Procedure Code which provides as hereunder:

“(1) The substance of the charge shall be stated to the accused person by the court, and he shall be asked whether he pleads not guilty, guilty or guilty subject to a plea agreement;

(2) If the accused person admits the truth of the charge otherwise than by a plea agreement his admission shall be recorded as nearly as possible in the words used by him, and the court shall convict him and pass sentence upon or make an order against him, unless there appears to it sufficient cause to the contrary:

Provided that after conviction and before passing sentence or making any order the court may permit or require the complainant to outline to the court the facts upon which the charge is founded.”

17. I find that the plea in this case is unequivocal. The case of *Adan vs. Republic [1973] EA 445* outlined the procedure to be followed when recording a plea of guilty as follows:-

“(i) The charge and all the essential ingredients of the offence should be explained to the accused in his language or in a language he understands;

(ii) The accused own words should be recorded and if they are an admission a plea of guilty should be recorded;

(iii) The prosecution should then immediately state the facts and the accused should be given an opportunity to dispute or explain the facts or to add any relevant facts;

(iv) If the accused does not agree with the facts or raises any question of his guilt his reply must be recorded and change of plea entered.

(v) If there is no change of plea, a conviction should be recorded and a statement of the facts relevant to sentence, together with the accused’s reply should be recorded.”

18. In the case of *Alexander Lukoye Malika vs. Republic [2015] eKLR* the Court of Appeal identified the situations in which a conviction based on a plea of guilty can be interfered with as follows: ***“A court may only interfere with a situation where an accused person has pleaded guilty to a charge where the plea is imperfect, ambiguous or unfinished such that the trial court erred in treating it as a plea of guilty. Another situation is where an accused person pleaded guilty as a result of mistake or misapprehension of the facts. An appellate court may also interfere where the charge laid against an accused person to which he has pleaded guilty disclosed no offence known to law. Also where upon admitted facts the Appellant could not in law have been convicted of the offence charged.”***

19. On the issue of conviction, I find that the circumstances of this case do not warrant the courts interference.

20. On the issue of sentence I find that the sentence is of seven (7) years imprisonment was proper and lawful as it is provided for under section 278 A of the Penal Code.

21. The Appeal lacks in merit and the same is dismissed.

22. The conviction and sentence are accordingly upheld.

DELIVERED, DATED AND SIGNED AT KERICHO THIS 25TH DAY OF MARCH 2022.

A. N. ONGERI

JUDGE