



REPUBLIC OF KENYA



KENYA LAW
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**Wamalwa v Republic (Criminal Appeal 84 of 2019)
[2022] KEHC 12472 (KLR) (25 July 2022) (Judgment)**

Neutral citation: [2022] KEHC 12472 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KITALE
CRIMINAL APPEAL 84 OF 2019
LK KIMARU, J
JULY 25, 2022**

BETWEEN

GEOFFREY WANYONYI WAMALWA APPELLANT

AND

REPUBLIC RESPONDENT

(From original conviction and Sentence in S.O. No 167 of 2019 of Chief Magistrate's Court at Kitale delivered on 23rd July 2019 by Hon C. M. Kesse- SRM)

JUDGMENT

1. The appellant Geoffrey Wanyonyi Wamalwa was charged with defilement contrary to section 8(1) as read with section 8(2) of the *Sexual Offences Act*. The particulars of the offence were that on July 20, 2019 at [Particulars withheld] area in Trans Nzoia County, the appellant intentionally caused his penis to penetrate into the vagina of NN a child aged four (4) years. In the alternative, the appellant was charged with the offence of committing an indecent act with a child contrary to section 11(1) of the *Sexual Offences Act*. The particulars of the offence were that on the same day and in the same area, the appellant intentionally caused his penis to come into contact with the vagina of NN a child aged four (4) years. When the appellant was arraigned before the trial court, he pleaded guilty to the charge. He was convicted on his own plea of guilty. He was sentenced to serve 30 years imprisonment.
2. The appellant was aggrieved by his conviction and sentence essentially stating that the plea of guilty that was recorded by the trial court was not unequivocal. He explained that prior to taking plea, the prosecution had induced him to plead guilty to the charge on condition that it would assist him get a lesser sentence. The appellant faulted the trial court for failing to take into consideration that he had been brought to court beyond the stipulated twenty four (24) hours period provided by the *Constitution*. He urged the court to set aside the plea of guilty that was recorded and allow the case to go to full trial so that he can defend himself. He therefore urged the court to allow his appeal, quash the conviction and set aside the sentence that was imposed upon him.



3. During the hearing of the appeal, the appellant reiterated that he did not plead guilty to the charge. He explained that when he was brought to court he was confused because after the alleged incident, he was beaten by members of the public and therefore he was not in a physical state to take the plea. He submitted that he was under psychological torture at the time he was brought to court that he was not in control of his senses when he admitted to the offence. He therefore urged the court to set aside the plea of guilty that was recorded and order the case to go to full trial.
4. Ms Kiptoo for the prosecution opposed the appeal. She filed written submission urging the court to dismiss the appeal. She submitted that the plea of guilty that was recorded was in accordance with the guidelines provided by the law and therefore the same should not be interfered with by this court. She reiterated that the trial court properly recorded the plea of guilty after it had satisfied itself that indeed the plea of guilty that was recorded was the clear intention and desire of the appellant. She therefore urged this court not to interfere with the conviction and sentence of the appellant.
5. This being a first appeal, it is the duty of this court to reconsider and to re-evaluate the evidence adduced before the trial court so as to reach its own independent determination whether or not to uphold the verdict of the trial court. In doing so, this court is required to take into account the fact that it neither saw nor heard the witnesses as they testified and therefore will have to defer to the trial court's conclusion regarding demeanour. (See *Okeno –Vs – Republic* [1972] EA 32.) The issue for determination by this court is whether the appellant was properly convicted for the offence convicted of defilement on his own plea of guilty.
6. In the present appeal, there is only one issue for determination: whether the plea of guilty that was recorded by the trial court was unequivocal. The procedural requirement for recording a plea of guilty is provided under section 207 (1) of the *Criminal Procedure Code*. This section has been given amplification by the Court of Appeal in the case of *Adan Vs Republic* [1973] EA 445 where Spry VP held at page 446 as follows:

“When a person is charged, 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. The magistrate should then explain to the accused person all the essential ingredients of the offence charged. 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. 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. 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. 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. The statement of facts and the accused reply must of course be recorded.”

7. Applying the above procedural directive of the Court of Appeal to the facts of this case, it is clear that the plea of guilty that was recorded by the trial court was unequivocal. The plea was taken in a language that the appellant understood. The charge was read to the appellant. The facts were read to him by the prosecutor. The appellant admitted to both the charge and the facts in support of the charge. Indeed the appellant even clarified the facts by indicating that he had used his penis to sexually assault the complainant and not a stick as stated by the prosecution in part of the facts. The appellant was given an opportunity to give his mitigation. He did so in a manner that was comprehensible and showed



remorse. Clearly, the appellant cannot be heard to say that he was not in his proper state of mind when the plea of guilty was recorded by the trial court.

8. The submissions by the appellant that he had been under duress when he pleaded guilty to the charge is not discernable from the proceedings of the trial court. The appellant did not complain that he was ill at the time and could not therefore take plea. The allegation by the appellant that he had been beaten by the members of the public before being taken to court to take plea is not borne by the record of the court. This court is of the considered opinion that such allegations are an afterthought.
9. In the premises therefore, this court holds that the appeal lacks merit and is hereby dismissed. The plea of guilty that was recorded was legal. The custodial sentence that was imposed on the appellant was legal. This court will not interfere with the same. It is so ordered.

DATED AT KITALE THIS 25TH DAY OF JULY 2022.

L KIMARU

JUDGE

