



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NANYUKI

CRIMINAL APPEAL NO. 44 OF 2016

CHARLES WACHIRA WANJAU.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an appeal from the original conviction and sentence by Hon. V. K. KIPTOON – SENIOR RESIDENT MAGISTRATE dated 27/11/2013 in Nanyuki Chief Magistrate’s Court Criminal Case No. 984 of 2013)

JUDGMENT

1. **CHARLES WACHIRA WANJOHI (the appellant)** was charged before the Nanyuki Chief Magistrate’s Court with the **offence of malicious damage to property contrary to section 339 (1) of the Penal Code**. He pleaded guilty and on conviction the trial court sentenced him to 9 months imprisonment.

2. The prosecution gave the following fact:-

“Court Prosecutor:- Facts are on 11.11.2013 at 3.00 a.m. the accused had gone to home of Nancy Wanjau Mumbi who was asleep with her daughter Agnes Wangari Wanjau. Accused started hitting the window panes which caused complainant to wake up. On opening the door to check who it was, the accused went to the said door and started banging it causing it to get dents.

The complainants by use of electricity light managed to see the accused where upon coming out they asked accused why he was doing that but accused had no reason. Complainant saw her window panes were broken. Her flower pot was broken by accused person. Accused person left without giving a reason for the damage. The following day complainant reported to Naromoru Police Station. Investigation into the matter was launched and on 26/11/2013 accused was charged and the exhibits are at Naromoru Police Station.”

3. The appellant confirmed that the facts were correct. After the prosecution stated that the appellant had committed a similar offence the appellant in his mitigation stated:-

“ I am sickly. I am at time confused.”

4. Appellant has filed this appeal against conviction and sentence. In his grounds of appeal the appellant submitted, through his learned counsel Mr. Wanjohi, that he does not understand Swahili or English, which was the language reflected by the trial court. That further the prosecution did not provide evidence of previous conviction and that therefore the trial court erred to have relied on that unsubstantiated information that he had previously convicted.

5. It is important to state that when the appeal came up for hearing, because of information given by the appellant’s sister I ordered the appellant to undergo mental examination.

6. The psychiatrist report presented to me revealed that the appellant has suffered from mental illness since 2013. The psychiatrist found appellant unfit to plead and made the following recommendation:-

“Will benefit on treatment. I have restarted him on medication and expected to improve. To be reviewed in two weeks.”

The two weeks have not elapsed yet.

7. The offence occurred in November 2013. It is clear both from the medical report and from the mitigations of the appellant before the trial court that the appellant had mental illness even at the time of committing the offence and upto today. The trial court failed to note that the

appellant admitted to being sickly and at times confused. The trial court had an obligation to ensure the appellant understood all the elements of the offence. Had the appellant understood that the offence of malicious damage under section 339 of the Penal Code required the offender to have wilfully and unlawfully damaged the complainant's property he probably would not have pleaded guilty since he stated at times he got confused.

8. The plea in my view was equivocal and accordingly the appellant should not have been convicted. The appellant, in view of his mental state, did not wilfully damage the complainant's property.

9. My finding, after evaluating the trial court's record, is that the essential elements of the charge were not clearly explained to the appellant as required in the case **ADAN vs REPUBLIC [1973] EA 445** and the plea of guilty therefore, entered against the appellant was equivocal.

10. I therefore make the following order:-

(a) The conviction of Charles Wachira Wanjau is hereby quashed and his sentence is hereby set aside.

(b) I order Charles Wachira Wanjau to be set free unless otherwise lawfully held.

DATED and DELIVERED at NANYUKI THIS 27TH day of FEBRUARY 2018.

MARY KASANGO

JUDGE

CORAM

Before Justice Mary Kasango

Court Assistant: Njue/Mariastella

Appellant: Charles Wachira Wanjau

For the State:

Language:

COURT

Judgment delivered in open court.

MARY KASANGO

JUDGE