



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NANYUKI
CRIMINAL APPEAL NO.22'A' OF 2017
LOBEKLEMPIRIKANY APPELLANT
VERSUS
REPUBLIC RESPONDENT
CONSOLIDATED
CRIMINAL APPEAL NO.22'B' OF 2017
LAANYULENAMPARASIO ... APPELLANT
VERSUS
REPUBLIC RESPONDENT

(Being an appeal from the original conviction and sentence by Hon. B S Khapoya Ag. Senior Resident Magistrate dated 30th September, 2014 in Maralal Principal Magistrate Court Criminal Case No. 716 of 2014)

JUDGMENT

1. LOBEKLEMPIRIKANY and LANYULENAMPARASIO (appellants) appeared before Principal Magistrate Maralal and pleaded guilty to the **offences of stealing stock Contrary to Section 278 of the Penal Code, on 1st Count**, and to the **offence of creating a disturbance in manner likely to cause a breach of peace Contrary to Section 95 (1) of the Penal Code.**

2. The Coram before the trial court of 30th September, 2014 was as follows:

“Before Hon. B S Khapoya Ag. Senior Resident Magistrate,

Court Prosecutor: IP Kibor,

Court Clerk: Munene,

Accused present

Interpretation:”

The court proceedings then reflect that both counts were read out to the appellants and that they were read

in Samburu language. The Coram as reproduced above however failed to indicate who was the interpreter into Kisamburu Language.

3. The fact that the trial court failed to provide the appellants with an interpreter is the crux of the appellants appeal.

4. **Article 50 (2) (m)** of the constitution provides:

“Every accused person has the right to a fair trial which includes the right –

(m) to have the assistance of an interpreter without payment if the accused person cannot understand the language used at the trial.

5. In view of the fact that the appellants were not provided with an interpreter of Kisamburu language, since the trial court’s record does not reflect such an interpreter, the guilty plea of the appellants undoubtedly was equivocal. There is the real danger that the appellants did not understand what they were pleading guilty to. In the case: **SIMON GITAU KINENE v REPUBLIC [2016]** the court discussed what is unequivocal plea and stated:

“The first point for analysis is an important point of departure namely the trite law stated by the Court in Ombena V Republic 1981 KLR 450 to the effect that whether a guilty plea is unequivocal or not depends on the circumstances of the case. Differently put, an appellate or a revising court must take the totality of circumstances into account in determining the equivocality or otherwise of a guilty plea”.

6. The surrounding circumstances of the appellants plea of guilty show that that plea was equivocal. Accordingly the appeal against conviction and sentence must succeed.

7. In the end the appellants conviction on both count 1 and count 2 is hereby quashed. The sentences on both those counts are set aside. I order that **LOBEKLEMPIRKANY and LANYULENAMPARASIO be set free from custody unless they are otherwise lawfully held.**

8. It is so ordered.

Dated and Delivered at Nanyuki this 31st October 2017

MARY KASANGO

JUDGE

Coram

Before Justice Mary Kasango

Court Assistant: Njue/Mariastella

1st Accused: **LOBEKLEMPIRKANY**

2nd accused: **LAANYULENAMP**

For state:

Language

COURT

Judgment delivered in open court

MARY KASANGO

JUDGE