



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KERUGOYA**  
**CRIMINAL APPEAL NO. 14 OF 2014**

**PETER WACHIRA WANJAU .....APPELLANT**

**VERSUS**

**REPUBLIC .....RESPONDENT**

*Appeal from the original conviction and sentence in Criminal Case Number 161 of 2014 in the  
Principal Magistrate's Court at Wang'uru – HON. D. NYABOKE (RM)*

**JUDGMENT**

1. The appellant herein, PETER WACHIRA WANJAU was charged on 24<sup>th</sup> March 2014 with four various counts of obtaining money by false pretenses contrary to Section 313 of the Penal Code before Principal Magistrate's Court at Wang'uru in Principal Magistrate's Court Criminal Case No. 161/14. He pleaded guilty to all the counts and was convicted on his plea of guilty and sentenced to 1 year in jail or a fine of Ksh. 50,000/=, on count II & III & iv, a fine of Ksh. 20,000/= each or 6 months in jail. The sentences were to run concurrently. He was dissatisfied with the conviction and sentence and filed this appeal raising eight grounds in his petition of appeal dated 15<sup>th</sup> April 2014. They are as follows:-
2. (a) *That the trial magistrate erred both in law and by fact by overlooking the fact that the plea taking proceedings proceeded without ensuring that the accused understood the language used as the interpretation used is vague and there is no evidence whether the accused understood the charge and every element.(sic)*  
  
(b) *That the trial magistrate erred both in law and fact by recording and entering a plea of guilty simply because the appellant accepted receipt of the money*  
  
(c) *That the trial magistrate erred both in law and fact by failing to note that the facts read out did not disclose any criminal offence to support the charges.*  
  
(d) *That the trial magistrate misdirected herself by failing to note that the issues brought before the trial Court was purely an issue of contract between two parties*  
  
(e) *That the trial magistrate erred both in law and fact by not taking into account that in mitigation the appellant alerted the Court that there was a pending Civil Case in the same Court and that he required a free bond which clearly shows that the plea taking exercise was not carefully explained to the accused and thus seeking at the mitigation stage.(sic)*  
  
(f) *That the Trial Magistrate's Court erred in its duty on ensuring that the fundamental rights of the accused were protected right from plea taking stage to avoid an unsafe conviction*

***(g) That the trial magistrate erred by being in a hurry to convict the appellant without taking an independent evaluation of issues before her before making a final decision***

***(h) That the trial magistrate erred both in law and fact by failing to give any reasons for handing the respective sentences.***

3. The appellant through his advocate Mr. Ngangah made further oral submissions to support the petition of appeal. He submitted that the appellant immediately preferred the appeal as he was dissatisfied with the manner the proceedings were conducted at the trial Court saying that the appellant did not understand the language used. He pointed out that the proceedings at the trial Court is unclear about the language that was used to take the plea as it is noted that the language used is English/Kikuyu/Kiswahili but the trial Court was vague as to which one was used exactly.
4. Mr. Ngangah further contended that plea taking is an important stage in the proceedings and a trial Court has a duty to explain to an accused person in a language he understands about the charge facing him. Mr. Ngangah contended that it was doubtful whether the accused was accorded the full rights by ensuring that the substance of the charge facing him and every element thereof were well explained to him to make him understand and appreciate the consequences of the plea that he had made. He submitted that his doubts is supported by the uniform answer recorded by the trial Court that indicated that the appellant gave which was;

***“It is true I received the money”***

5. The appellant further contended that the element of criminality on the charge was not well explained to him and there was difference between receiving the money and receiving it ***“with intent to defraud”*** which brings out the criminality. He argued that this distinction was not brought out well and that a mere acceptance of money is not sufficient to accept a plea of guilt.
6. The appellant further contended that the facts were not clearly read over to him pointing out what he told the Court in mitigation. He submitted that **the fact that the appellant asked** for bond and the fact that he told the trial Court of an existence of a civil case relating to the same should have been sufficient for the trial Court to enter a plea of not guilty as there was a clear indication that the appellant did not appreciate what was going on.
7. The appellant also submitted that the trial Court had power to change plea before sentence as there was clear basis that the appellant’s conviction was not safe.
8. On the issue of sentence, the appellant faulted the trial magistrate for giving varying sentences for the same or similar counts on the same charge.
9. The respondent through Mr. Omayo for Director of Public Prosecution opposed the appeal urging this Court to find that the plea was properly taken as interpretation indicated was English/Kikuyu/Kiswahili. He contended that the appellant admitted the charge read over to him and he could not have admitted if he did not understand the language.
10. The State further contended that the proceedings were well taken pointing out that the charge sheet had four counts all of which were read over to the appellant. Mr. Omayo also pointed out from the proceedings indicating that the facts were read over to the appellant which he admitted. He contended that the same were clear and appellant admitted showing that there was no mistaken belief that the facts were not clearly read or that the appellant did not understand the facts well.
11. On the issue of what the appellant told the Court in mitigation, the State responded that no material was placed before the trial Court to prove that there was a civil case pending which related to the charge then facing the appellant at the trial Court. Mr. Omayo supported the trial Court’s conviction on the basis of plea of guilty made by the appellant and also supported the sentence arguing that the trial Court had a discretion in meting out varying sentences on the counts that the appellant had been convicted.
12. I have considered the appeal and the submissions made both by the appellant and the respondent which were ably made by Mr. Ngangah and Mr. Omayo respectively. The issue for determination in this appeal is fairly basic and simple and the issue is whether the plea taken by the trial Court was unequivocal in that it was taken in a language the appellant clearly understood or was familiar with and whether the facts detailing the particulars of the charge were clearly spelt out in a language the appellant understood.

13. I have looked at the proceedings at the subordinate Court and as pointed out by the appellant's counsel, what is indicated as the language used is either of three languages; English, Kiswahili or Kikuyu. The trial did not indicate which language was used neither is there any indication on what language the appellant preferred. It is therefore unclear from the proceedings whether English was used or Kiswahili or if any interpretation in Kikuyu was given. It is incumbent upon a trial Court at plea stage to be meticulous in recording the language an accused clearly understands or is familiar with to enable him/her plead to the same properly and in unequivocal manner. The Constitution under Article 49 & 50 provides safe guards on the rights of accused persons and among the rights is to be informed in a language he understands about the reasons for being arrested and when charged in a Court of law, a right to have an assistance of an interpreter so as to be informed of the charge(s) facing him in sufficient details to enable him/her answer to the same.
14. Secondly, on the question of facts forming the substance of the charge, an accused person has a right to plead to the same and under the provisions of Section 207(1) of the Criminal Procedure Code, a trial Court taking plea is required under Sub-section (2) of the same section in cases where an accused pleads guilty to the facts, to record the answer the accused gives as clearly as possible in the exact words used by the accused. The above provisions in addition to the Constitutional provisions is to ensure that an accused plea is taken in unequivocal manner and there should be no doubts as whether the accused has understood the charges facing him in addition to the substance and every element of the charge.
15. Looking at the proceedings before the trial Court, this Court finds that the facts read were sketchy. The facts did not state who was paid the money and the details of the exhibit produced were not clearly explained to the appellant. Furthermore, the language used to read the facts is not indicated. It is unclear really if the appellant understood the facts before pleading to them. I do agree with the appellant's counsel that in view of what the appellant told the trial Court in mitigation, there was basis for the trial Court to believe that the appellant had not clearly appreciated what was going on.
16. This Court finds that the trial magistrate fell into error when he ignored what the appellant said in mitigation. The trial Court ought to have changed the plea of guilty to that of not guilty as there was indications sufficient to show that there was more about the charges that had just been read that required more interrogation by way of fixing the matter for hearing for the interest of justice.
17. In sum, I do find that the plea taken before the trial Court was not done in accordance with the law. It was not unequivocal and it was not safe to proceed to convict and sentence the appellant herein. The appeal is merited and in the circumstances, the same is allowed. The conviction and sentence is hereby set aside. The appellant shall be taken back before a different magistrate for the plea to be taken afresh at Wang'uru Law Courts. It is so ordered.

**R.K. LIMO**

**JUDGE**

**26/5/2015**

26/5/15

Before Hon. Justice R. Limo

State Counsel Omayo

Court Assistant Willy

Appellant: present

Interpretation English/Kikuyu

Nduku holding brief for Nganga for appellant present

Omayo for State present

**COURT:** Judgment signed, dated and delivered in the open court in presence of Omayo for Deputy Director of Prosecutions and Ndungu holding brief for Ng'ang'ah for appellant.

R. K. LIMO

JUDGE

26/5/2015

**Later:**

Mr. Nganga for appellant

Mr. Omayo for State

MR. NGANGA: I pray that the accused be released on bond pending plea taking before the subordinate court.

**OMAYO:** No objection.

**COURT:** The accused be released on the same bond terms. He is directed to appear before Wanguru Law Courts tomorrow 27<sup>th</sup> May, 2015 for mention. He is directed to appear before O.C.S. Wanguru Police Station for purposes of preparation of charge sheet and presentation to Principal Magistrate's Court at Wanguru.

R. K. LIMO

JUDGE

26.5.15