



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT BUNGOMA

CRIMINAL APPEAL NO.79 OF 2013

KENNEDY WAFULA.....APPELLANT

VRS

REPUBLIC.....RESPONDENT

(Appeal from the Conviction and Sentence by ag. Principal Magistrate Hon. P. N. Areri

in

Bungoma CM Court in CR. CC. NO.1011 of 2013)

JUDGMENT

1. Kennedy Wafula, the Appellant was on 07th June, 2013 charged with the offence of setting fire to crop of cultivated produce contrary to Section 334 (a) of the Penal Code. He pleaded guilty to the charge and the Principal Magistrates Court, Bungoma (P. N. Areri) convicted him of the charge and sentenced him to five (5) years imprisonment.
2. The Appellant has now appealed to this court against the conviction and sentence. In his Memorandum of Appeal he set out five (5) grounds of appeal. These can be reduced to three as follows:
 - a) That the trial court erred in convicting the Appellant on a defective charge and without considering that the pleas taken was unequivocal.
 - b) That the trial court erred in sentencing the Appellant without inquiring whether the Appellant understood the nature of the charge and sentence.
 - c) That the trial court erred in sentencing the Appellant to five (5) years imprisonment without fine and without considering the mitigation.
3. Mr. Kituyi, Learned Counsel for the Appellant submitted that the pleas was not unequivocal; that the Appellant changed his plea at mitigation; that the principles set out in the Case of **Adan -vrs- Republic [1973] EA** on taking a plea were not followed and that the accused did not understand the charge and that a plea of not guilty should have been entered.
4. Mr. Kamau, Learned Counsel for the State opposed the appeal. He submitted that the plea was taken in compliance with Section 207 of the Criminal Procedure Code; that the charge and facts were properly

read and interpreted to the Appellant in Kiswahili; that he properly pleaded to the charge and facts; that the Appellant did not change his plea during the trial and that the charge was not defective. Counsel urged that the appeal be dismissed.

5. I have considered the record and submissions of Counsel. On the contention that the charge was defective and that the plea was not unequivocal, I have seen the charge sheet. The charge clearly discloses the offence for which the Appellant was charged with. The charge sheet also properly set out the particulars of the offence. When the charge was read to the Appellant, he pleaded guilty.

6. In the Case of **Lusiti -vs- Republic [1976 – 1980] 1 KLR 585** at 586, the Court held:-

“In Adan vs- the Republic [1973] EA 445, the Court of Appeal for East Africa considered the manner in which pleas of guilt should be recorded and the steps which should be followed. It laid down the following guidelines: (i) the charge and all the essential ingredients of the offence should be explained to the accused in his language or in a language which he understands; (ii) the accused's own words should be recorded and if they are an admission, a plea of guilty should be recorded; (iii) the prosecution 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 to the facts or raises any question of his guilt his reply must be recorded and change of plea entered; and (v) if there is no change of plea a conviction should be recorded and a statement of facts relevant to sentence together with the accused's reply should be recorded.”

7. Those then are the principles applicable. The principles are well set out in Section 207 of the Civil Procedure Code Cap 75 of the Laws of Kenya.

8. In the instance case, the record shows that the charge and the ingredients of the offence were read and explained to the Appellant in Kiswahili language. The Appellant does not contest that he understands Kiswahili. The Appellant's response is recorded to have been “*Ni kweli*”, which means “*it is true*”. When the facts were also explained to him in Kiswahili he admitted them. Upon conviction, the Appellant gave a lengthy mitigation. He even gave an explanation as to why he with others set the produce on fire. It was because they had allegedly not been paid. To my mind, this clearly shows that the Appellant understood the charges he was facing. The plea was unequivocal. The statement relied on by his Counsel to show that he changed his plea at mitigation was not a defence in my view.

9. In this regard, I am satisfied that the plea was unequivocal and that the Appellant clearly understood the charge he was facing. The provisions of Section 207 of the Criminal Procedure Code were properly complied with by the trial court. The criticism levied against the trial court that it did not inquire whether the Appellant understood the nature of the charge and sentence, in my view is therefore without basis.

10. The other ground was that the sentence of five (5) years meted on the Appellant was excessive and that the trial court did not consider the mitigation. I have seen the record, the Appellant gave his mitigation upon which the court recorded that it had considered the same because the offence was committed intentionally and unlawfully the court had to give a deterrent sentence. Section 334 of the Penal Code provides a maximum of 14 years imprisonment. It does not give an option of a fine.

11. The Appellant was sentenced to five (5) years imprisonment. The section under which he was charged does not have any option of a fine. In my view, the sentence was not excessive. The trial court cannot be faulted for not giving any option of a fine as the law does not give such a relief.

12. Accordingly, I find that the Appeal lacks merit and the same is hereby dismissed.

Dated and delivered at Bungoma this 19th day of May, 2014.

A. MABEYA

JUDGE