

ELIZABETH KIMANZI APPELLANT

VERSUS

REPUBLIC RESPONDENT

(Being an appeal against original judgment of the Hon. Senior Resident Magistrate, in Kitui Mr. T. M. Mwangi delivered on 6th May, 2010 in Criminal case No.273 of 2010)

JUDGMENT

This appeal was conceded to by the state on the ground that the plea of guilty was not unequivocal. The appellant was charged before the Principal Magistrates court, Kitui with the offence of concealing birth contrary to section 227 of the Penal Code. It was

alleged that on 23rd April, 2010 at around 6.30 p.m. at Maseki Shopping Centre, Maseki Sub-location, Matinyani Location in Kitui District of the Eastern Province, the appellant concealed birth by depositing the foetus in a bucket.

The appellant pleaded guilty to the charge. The facts were subsequently led and the appellant confirmed the same as, being true whereupon she was convicted on her own plea of guilty and subsequently sentenced to 5 years imprisonment. Aggrieved by the conviction and sentence, the appellant through **Messrs Martin M. Muithya & Co. Advocates** lodged this appeal which, as already stated has been conceded to by the State.

In my view, **Mrs. Gakobo** was right in conceding the appeal. It is quite apparent that the plea of guilty entered against the appellant was not unequivocal. From the record, when the appellant was convicted on her own plea of guilty, the appellant is recorded as having stated in mitigation that she had a problem giving birth. Previously she had aborted a child due to malaria. She had again this time around aborted on the same account. The court should at this juncture have entered a plea of not guilty and had the case proceed to trial in the normal manner. In the premises the plea as taken was therefore not unequivocal. The conviction and subsequent sentence imposed on the appellant was therefore illegal. It does appear to me that the appellant did not understand what she was pleading.

The state did not seek a retrial and rightly so in my view. Due to the nature of the offence and the nature of the exhibit availed, a successful retrial cannot be undertaken.

Accordingly, the appeal is allowed, conviction quashed and the sentence imposed set aside. The appellant should be set at liberty forthwith unless otherwise lawfully held.

Ruling dated signed and delivered in Machakos this 29th day of February, 2012.

ASIKE-MAKHANDIA

JUDGE