

Be that as it may, on grounds one and two of the appeal, it was contended that when a fresh plea was taken on 24th February, 2011, there was no indication as to the language used and if it was the Dinka language, there was no indication as to whether there was an interpreter available.

A perusal of the original record by this court reveals that on the 7th December, 2010 when the appellant first appeared in court, there was indication that he only spoke and understood the Dinka language. Consequently, the plea was deferred to 8th December, 2010 when a Dinka interpreter was to be availed. Indeed, such interpreter was availed i.e. one Maria Nyandule Dnot. The appellant was at the time charged with assault causing actual bodily harm contrary to section 251 of the penal code. He pleaded guilty but the facts could not be read to him due to the non-availability of the appropriate medical report form (P3 form).

The matter was thereafter adjourned on several occasions. Finally, on the 24th February, 2011 when the matter was mentioned for facts, the prosecution substituted the charge for that of grievous harm contrary to section 234 of the penal code. A fresh plea was taken. The appellant pleaded guilty yet again and was convicted accordingly after admitting the availed facts. Although the record did not indicate the name of the interpreter, it showed that there was interpretation and that the charge was read over and explained to the appellant in the Dinka language which he understood. Indeed, the appellant answered the charge in that Dinka language.

The failure by the trial court to indicate the name of the interpreter did not prejudice the appellant and was more or less an oversight which did not go into the substance of the charge and render the plea improper.

Consequently, grounds one (1) and two (2) of the appeal are unmerited.

As regards ground three, the provisions of Article 50 of the Constitution are invoked. It is thus contended by the appellant that being a foreigner i.e. Sudanese, he was not informed by the court of his right to be represented by an advocate of his choice as required by Article 50 (2) (g) of the Constitution.

The said Article 50 (2) (g) provides that:-

“Every accused person has the right to a fair trial, which includes the right to choose, and be represented by and advocate, and to be informed of this right promptly.”

In the lower court, the appellant opted to represent himself. The record does not show that he sought for time to engage an advocate. In this appeal, the right to be represented by an advocate has been exercised by the appellant meaning that he was very much aware of such right from the beginning and cannot now feign ignorance on ground of being a Sudanese. The lower court record did not have to reflect that Article 50 (2) (g) had been complied with. In any event, the Article does not require that an accused person be informed of the right by the court. For the foregoing reasons, ground three (3) of the appeal is also unmerited.

As stated hereinabove, the sentence meted out against the appellant by the trial court was neither harsh nor excessive. If anything, the sentence was on the lower side, regard being given to the circumstances of the case. In sum, this appeal is lacking in merit in its entirety. It is therefore dismissed. The appellant may serve the remainder of the sentence at the Lodwar Prison.

[Delivered and signed at Kakuma this 7th day of June, 2012.]

J.R. KARANJA.

JUDGE.