



IN THE HIGH COURT OF KENYA

AT NAKURU

CRIMINAL APPEAL NO. 220 OF 2010

SAIKO LEKERESIE.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

**(An Appeal from original conviction and sentence in Nakuru
C.M.CR.C.NO.7179/2009 by Hon D. K. MIKOYAN, Senior Resident Magistrate, dated 11th
February, 2010**

JUDGMENT

This is an appeal arising from a plea of guilty which ordinarily by dint of **Section 348** of the **Criminal Procedure Code** can only be entertained in so far as severity or legality of the sentence is concerned. I have said ordinarily because it is now settled that **Section 348** aforesaid is not a complete bar to an appeal on any ground other than severity or legality of the sentence.

The appellant who was charged with **grievous harm** contrary to **Section 234** of the **Penal Code** was convicted and sentenced to 15 years imprisonment on his own plea of guilty. He was aggrieved and now brings this first appeal through counsel challenging the decision of the trial magistrate on the grounds that the plea was equivocal; that the interpreter was not sworn; that the appellant was denied legal representation and that the learned magistrate failed to explain to the appellant all the ingredients of the offence charged.

Learned counsel for the respondent has opposed the appeal arguing that the plea was unequivocal and that the sentence was within the law.

I have considered the grounds of appeal, submissions and authorities cited. The only issue in this appeal is whether or not the plea was unequivocal. It is noted that when the appellant was first brought to court, he pleaded guilty but when the facts were narrated to him, he explained the circumstances of the attack on the complainant thereupon, the trial magistrate entered a plea of not guilty. Two months later, he changed his plea and admitted the offence. It is imperative that this part of the record before the trial court be reproduced here:

**“Accused: I don’t understand Kiswahili. I better (sic) off with Samburu (sic)
Court: File placed aside.**

**D. K. MIKOYAN
SENIOR RESIDENT MAGISTRATE
11/2/2010**

Shortly: Court resumes and Cpl. Iverly Santi – Samburu Prison Warden

Accused: Kindly read the charge to me

Court: Charge read in Kiswahili and translated in Samburu and reply:

Accused: It is true

Court: Facts

Prosecutor: (narrated the facts)

Court: Are the facts correct?

Accused person: Yes, I admit the facts.

Court: Convicted on plea of guilty

Prosecutor: No records of accused but note extend of injury

Court: Mitigation

Accused: I am an orphan, sole bread winner and I do seek pardon. I will not repeat the same.

Court: Complainant to state how he has been affected by the injury.

Complainant: (Explains how he has lost one eye as a result of the attack)”

How can such meticulous approach be faulted?

I have no doubt that the appellant wished to plead guilty and did so unequivocally. He perfectly understood the proceedings before the learned trial magistrate who went out of his way to ensure the appellant understood and appreciated that he was admitting the offence. He voluntarily did so. See **Ebenyo Yeiya Elim Vs. Republic**, Criminal Appeal No. 53 of 2010 Eldoret). The appellant has also complained that the interpreter was not sworn. No law was cited in support of this. However no prejudice was suffered as the appellant has not complained on the competence of the interpreter or accuracy of the interpretation.

In **Philip Lepuyanpui & Lenkarus alias Mwokozi Vs. Republic** Criminal Appeal No.283 of 2004, Ibrahim, J held that the Criminal Procedure Code does not provide for the swearing of an interpreter before interpretation. That that is an administration requirement. I am persuaded.

The final ground is on the appellant’s legal representation. Counsel representing the appellant in this appeal appeared before the court below on the day of first appearance after the plea had been taken – at the stage of surety approval. She did not address the court as indeed no such opportunity is available to counsel when the court is examining a surety. That was on 23rd December, 2009. In her presence, the matter was slated for mention on 7th January, 2010. From 23rd December, 2009, counsel did not appear until the filing of this appeal, one year later. Although the appellant had an interpreter, he did not even suggest that he had an advocate. The appearance of the advocate in the manner described hereinabove, in my view, did not make her the advocate for the appellant.

In view of the nature of the injuries suffered by the complainant, the sentence imposed was within the law.

For all these reasons, the appeal fails and is dismissed.

Dated, Delivered and Signed at Nakuru this 28th day of March, 2011.

**W. OUKO
JUDGE**