



**No. 2801**

**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KISII**

**CRIMINAL APPEAL NO. 15 OF 2011**

**FESTUS NYAKOE MANYARA ..... APPELLANT**

**-VERSUS-**

**REPUBLIC ..... RESPONDENT**

**9/5/2011**

**Before Asike-Makhandia J.**

Nyabonyi/Nyaganga court clerk

Mr. Masese for appellant

Mr. Gitonga for state

**Gitonga:** I concede to the appeal. Firstly, the appellant was not convicted at all. Secondly, even if he had been properly convicted, the plea itself was unequivocal.

**ASIKE-MAKHANDIA**

**JUDGE**

**Masese:** I was going to advance the same grounds. I am obliged that the state has conceded to the appeal.

**ASIKE-MAKHANDIA**

## JUDGE

### JUDGMENT

The appellant was allegedly convicted on his own plea of guilty. Upon conviction he was sentenced to 2 years imprisonment. Being dissatisfied with the conviction and sentence aforesaid, he lodged the instant appeal through **Messrs G.J.M Masese Esq.** The grounds of appeal were basically two; the plea as taken was not unequivocal and that the sentence imposed was manifestly excessive given the circumstances of the offence.

At the hearing of the appeal the state conceded to the same on the grounds that the appellant was not convicted as required before the sentence was imposed. Secondly, that even if the appellant had been properly convicted the plea itself was not unequivocal.

**Mr. Masese** agreed with the position taken by the state. In other words, he wholly associated himself with the submissions of the learned state counsel.

Having perused the record I have no doubt at all in my mind that the state was right in conceding the appeal. The plea as taken completely violated the procedure for taking pleas set out in the celebrated case of **Adan –vs- Republic (1973) E.A 445**. Ideally, the magistrate ought to have entered a plea of guilty against the appellant once the charge was read to him and he admitted the same. An accused cannot be convicted on the basis of the charge being read to him and admits the same. Conviction can only be entered once the facts have been read out and the accused accepts them as well. Because of this procedural irregularity, the appellant was not properly convicted to warrant the sentence imposed. Indeed there is no entry of a conviction once the facts were laid out by the prosecution and accused called upon to admit. The appellant did admit to the facts. However, there was no conviction thereafter.

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

**Judgment dated, signed and delivered** at Kisii this 9<sup>th</sup> day of May, 2011.

**ASIKE-MAKHANDIA**

JUDGE