



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT BUNGOMA

Criminal Appeal 126 of 2009

GEOFFREY MUKAMI MUKHWANAAPPELLANT

~VRS~

REPUBLIC.....RESPONDENT

JUDGMENT

This is an appeal from Bungoma Magistrate’s Court where the accused pleaded guilty to the charge of grievous harm contrary to section 234 of the Penal Code and was sentenced to five (5) years imprisonment.

The Appellant in his petition of appeal states that the plea was not unequivocal and that the facts did not disclose an offence. Finally, that the sentence was harsh and excessive.

Mr. Makali argued the grounds of appeal citing section 77 (2) of the Constitution. He also cited the case of ADAN ~VRS~ REPUBLIC COURT OF APPEAL CR. APP. NO.58 AND 1972 where the principles of taking a plea were laid down. The case of NJUKI ~VRS~ REPUBLIC NYERI HIGH COURT CRIMINAL APPEAL NO.10 OF 1990 where the appeal was allowed on grounds that the exact words said by the accused were not recorded.

The state opposed the appeal on grounds that the language used was clearly recorded as Kiswahili and that the appeal on conviction is barred by section 348 of the Criminal Procedure Code.

On language, the principles laid down in the case of ADAN ~VRS~ REPUBLIC for plea taking are still applicable. The law has not changed. In the case before me the lower court recorded the following:

“Interpretation – Kiswahili

The substance of charge and every element thereof has been stated to the accused person, in the language he understands, who being

*asked whether he admits or denies the truth of the charge replies:-
Accused – It is true”.*

The mere indication that there was interpretation in Kiswahili does not explain what language the court used. Failure to indicate the language that the accused understands creates doubt as to whether the accused understood the charge or not. For a plea to be unequivocal, all the principles laid down in the case of ADAN ~VRS~ REPUBLIC must be complied with. The magistrate failed to comply with the principles in regard to the issue of the language. This contravenes section 77 (2) of the Constitution which requires that the trial be conducted in the language that the accused understands.

The plea was therefore not unequivocal for non-compliance with legal requirements. The other ground of appeal is in regard to the facts disclosing an offence. The facts must follow an unequivocal plea. Having found that the plea was equivocal, the issue of the facts of the case is immaterial.

Section 348 of the Criminal Procedure Code is not a complete bar to appeal against conviction. If the plea was not taken as stipulated by the law, the accused may appeal against conviction.

It is my finding that this appeal succeeds and is hereby allowed.

The Appellant was convicted on the 2nd October, 2009 which is only two months ago. I find this case suitable for retrial. I hereby direct that the same be retried by a different magistrate within seven (7) days.

**F. N. MUCHEMI
JUDGE**

*Dated, Delivered and Signed at Bungoma
This 16TH day of February, 2010 in the presence of the appellant
And the state counsel Mrs Leting*