



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT MERU

Criminal Appeal 180 of 2008

KAIMBA KWENGAAPPELLANT

VERSUS

REPUBLICRESPONDENT

CRIMINAL LAW

Plea of guilty be unequivocal to sustain a conviction

(Appeal from the judgment and conviction and sentence of the Resident Magistrate Obutu T.A. Esq. in Marimanti Criminal Case No. 383 of 2008)

JUDGMENT

Kaimba Kwenga (the Appellant) appeals against his conviction and sentence by the learned Resident Magistrate Marimanti in Marimanti Criminal Case No. 383 of 2008 on three grounds –

- (a) The learned Resident Magistrate erred in law by conviction of the Appellant upon a plea that was not unequivocal:**
- (b) The learned Resident Magistrate erred in law by convicting the Appellant for offences that were not supported by the facts presented by the prosecution;**
- (c) The sentence passed against the Appellant was manifestly excessive in the circumstances of the case;**

And for those reasons, the Appellant prayed that the appeal be allowed, the conviction be quashed and sentence be set aside.

The appeal raises three issues, **firstly** whether the plea of the accused was unequivocal, **secondly** whether the Appellant was convicted of offences, which were not supported by the facts as narrated by the prosecutor, and **thirdly** that the sentence passed against the Appellant was manifestly excessive in the circumstances of the case.

The appeal was urged before me by Mr. Murango Mwenda learned Counsel for the Appellant whereas Mr. Kimathi learned State Counsel appeared for the Republic. There was no disagreement over the facts of the case. The appellant was charged with three (3) counts, two of which were premised on section 52

of the Forest Act 2005, and the third count on section 54 of the said Act. The Appellant pleaded guilty to all the tree counts, and was convicted on his own plea of guilty. He was sentenced to a fine of Kshs. 20,000/= on each count and in default to serve one year for each count, and that the sentences were to run consecutively, that is to say, Kshs, 60,000/= on the fine and 3 years imprisonment in default.

Section 207(2) of the Criminal Procedure Code (Cap 75, Laws of Kenya), provides that where the accused pleads guilty, the court shall convict and sentence him. The Court has however discretion to require the prosecution to read the facts to the court, and require the accused to confirm any of facts as outlined by the prosecution. No such facts were narrated to the appellant as is required under the principles laid down in the case of **ADAN VS REPUBLIC [1973] E.A. 445**.

Consequently the plea was not unequivocal, that is to say, it was not unambiguous. On this ground therefore the conviction be quashed and sentence set aside.

Section 348 of the Criminal Procedure Code provides that no appeal shall be allowed in the case of an accused person who has pleaded guilty and has been convicted on that plea by a subordinate court except as to the extent of legality of the sentence. The plea must however be unequivocal. If the plea is not unequivocal the conviction will be quashed and sentence set aside.

Mr. Murango's submission for the Appellant was that the three counts for which the offences arose constituted one transaction, and to sentence the accused to a fine of Kshs. 20,000/= on each count, and one year's imprisonment in default and that the sentences to run consecutively, would mean a cumulative fine of Kshs 60,000/= and imprisonment for 3 years. This Mr. Murango was both excessive and harsh.

The plea was not unequivocal under the principles set out in the **ADAN VS REPUBLIC (SUPRA)**. The conviction is therefore quashed, and sentence set aside.

Dated, delivered and signed at Meru this 15th day of May 2009.

M.J. ANYARA EMUKULE

(JUDGE)