

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYERI
Criminal Appeal 64 of 2006

STEPHEN WANJAU MATHENGE APPELLANT

VERSUS

REPUBLIC RESPONDENT

*(Being an appeal from the judgment of H.M. Nyaberi,
Resident Magistrate in Principal Magistrate's
Criminal Case No. 215 of 2006 at Nyahururu)*

JUDGMENT

The Appellant was charged in the lower court with grievous harm contrary to Section 234 of the Penal Code. When he was first presented before court on being asked to plead he pleaded not guilty. Later on during the proceedings before the trial commenced the Court Prosecutor informed the court that the Appellant was suffering from mental illness and that he had been treated at Nyahururu Hospital for some time without improvement. The Court Prosecutor informed the court that he had received a letter from the doctor requesting the Appellant to be referred to Psychiatric Unit in Gilgil for treatment and management. The court on 28th March 2006 made an order referring Appellant to that hospital for treatment. The court ordered that the treatment report to be provided before court at the hearing date of 6th April 2006. On that date the Court Prosecutor told the court that he had seen the Appellant's treatment notes which however was not accompanied by a doctor's report. He said that the notes indicated that the Appellant had been treated and that he was mentally calm. The court did not make any order in reference to that information. The next thing in the proceedings was an application by the Court Prosecutor for the substitution of the charge to Grievous harm. The Appellant had previously been charged with the offence of Assault. When the substituted charge was read to the Appellant and he was asked to plead the Appellant responded, "It is true." The Court Prosecutor proceeded to give the facts of the case. The Appellant confirmed the facts were correct. The court sentenced the Appellant to four years imprisonment. Section 207 (2) of the Criminal Procedure Code provides that;

"If the accused person admits that the truth of the charge his admission shall be recorded as nearly as possible in the words used by him, and the court shall convict him and pass sentence against him, unless there appears to it sufficient cause to the contrary."

That section although requiring a conviction to be written in the record the court should not record a conviction where there seems to be sufficient cause. In this case the Appellant was referred to a Psychiatric Unit for treatment and management for his mental illness. When he thereafter appeared before court the court did not ascertain his mental well being before proceeding with the matter. The record shows that it was the Court Prosecutor who said that the Appellant had been treated and looked sober. The learned magistrate in proceeding to receive the Appellant's plea of guilty in my opinion in those circumstances show that the plea was not unequivocal. Before convicting on a plea of guilty it is essential that every constituent of the charge should be explained to an accused. An accused then should be required to admit or deny every such constituent. In our case the court needed to take great caution in receiving the Appellant's plea. When the appeal came for hearing the learned State Counsel conceded to the anomaly of the conviction of the Appellant. He was of the view that in the circumstances what the lower court should have done is to proceed with the trial. The learned counsel for the Appellant was obliged by the state's concession she informed the court from the bar that the Appellant has continued to receive medical treatment. She confirmed that she would supply a Medical Report although to date it has not been supplied. The Appellant was said to have served a prison term before being released on bail. In view of the shortcomings of the recording of plea of guilty I do hereby find that the appeal must succeed because the plea was not unequivocal. Accordingly the Appellant's appeal succeeds and the Appellant is hereby set free unless otherwise lawfully held.

Dated and delivered at Nyeri this 24th day of June 2008.

MARY KASANGO

JUDGE