

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MACHAKOS
Criminal Appeal 77 of 2005

CHRISTINE NZULA MULWA.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

1. The Appellant, Christine Nzula Mulwa was the accused person in Machakos CM's Court Criminal Case No. 2111/2005. She faced the charge of attempted murder contrary to section 220(a) of the Penal Code. The particulars were that on the 26th day of July 2005 at St Valentine Estate in Machakos District within Eastern Province unlawfully attempted to cause the death of Rosalia Kanini Mutuku by poisoning toasts of bread with RED CAT POISON.”

2. On 28.7.2005 when she was asked to plead to the charges, the Appellant pleaded guilty and was sentenced to serve 10 years in prison. She preferred the present appeal which is conceded principally for the reason that the plea was not unequivocal and the language used was not indicated at all in the proceedings. A retrial is sought which is not opposed.

3. I agree that where the language used in taking the plea is not indicated as is the case here, then it is the law as I understand it, that the proceedings are vitiated. It was said in Adan vs Republic [1973] E.A. 445 that where the charge and essential ingredients of the offence are not explained to the accused in his language or in a language he understands, the plea was equivocal and the appeal was allowed.

4. That being the law, the Appeal is allowed and the conviction is quashed and sentence is set aside. There being no objection to a retrial and since no reason has been advanced why I should not make such an order, the Appellant shall be retried before the CM's Court in Machakos by any magistrate other than T.O. Okello Esq. S.R.M.

5. Orders accordingly.

Dated and delivered at Machakos this **4th** day of **December 2008**.

Isaac Lenaola

Judge

In the presence of: Mr. Makundi for Appellant

Isaac Lenaola

Judge