



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Criminal Appeal 1078 of 1992

**(From original conviction(s) and Sentence(s) in Criminal Case No. 3302 of 1992 of the **

Chief Magistrate's Court at Nairobi

MAURICE WAMBUA MUIA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

J U D G M E N T

MAURICE WAMBUA MUIA was convicted by the CM's court Nairobi on 22nd June 1992. He was sentenced to 3 years imprisonment with four strokes of the cane. He served the sentence in full before his appeal which he lodged on 3rd July 1992 immediately after sentence could be heard.

Mr. Ogutu, for the Appellant argued the appeal on his behalf. The Appellant had been charged with **BURGLARY AND STEALING** contrary to **Section 394 (2) and 279(b)** of the **Penal Code**. The particulars of the charge were as follows: -

“On the 17th day of April 1992 at Githurai Nairobi within the Nairobi area, jointly with others not before the court broke and entered the dwelling house of Francis Walkando with intent to steal there in and did steal from there in two blankets, five pairs of shoes, one bed sheet, eight sufurias, three basins, three towels, two mattresses, two pillow cases, and one pair of track suit, all valued at Kshs.12,000/- the property of the said Francis Waikando.

In the alternative the Appellant faced a charge of **HANDLING STOLEN GOODS** contrary to **Section 322(2)** of the **Penal Code**. The particulars were as follows: -

“On the 13th day of June, 1992 at Githurai Estate Nairobi within the Nairobi area, handled stolen goods in that other than in the cause of stealing dishonestly received one track suit jacket valued at Kshs.150/- the property of Francis Waikando knowing or having knowledge to believe it to have been stolen or unlawfully obtained.”

Mr. Ogutu's first submission was that the plea was not property taken and that the conviction was a nullity. Counsel submitted that the language of the court was not indicated and that after the charge and its particulars were read, the Appellant was convicted without any facts being given Counsel also submitted that there was no indication of which count the Appellant was convicted of.

Mrs. Kagiri for the State opposed the appeal. Counsel submitted that even though the language used was not indicated, it was clear that the Appellant participated in the trial and that he indicated he

understood what was going on in court. Counsel submitted that the particulars of the charge were sufficient to convict.

As indicated earlier the appellant faced a principle count **BURGLARY** and an alternative count of **HANDLING**. The court is recorded as having read the charges and its particulars to the Appellant who admitted the charge. The court then required the prosecution to give the facts of the case to which the prosecutor indicated that facts were as per the charge sheet and that a truck suit was recovered. In the leading case on the plea taken of Adan vs. Republic 1972 EA 445 the court outlined the procedure of taking plea thus: -

“(i) the charge and all the essential ingredients of the offence should be explained to the accused in his language or in a language he understands;

(i) the accused’s own words should be recorded and if they are an admission, a plea of guilty should be recorded;

(ii) the prosecution should then immediately state the facts and the accused should be given an opportunity to dispute or explain the facts or to add any relevant facts.”.

I find that the plea was not properly taken in that no facts of the case were given by the prosecution. The Appellant admitted the particulars of the charge only which were insufficient to fully satisfy the requirement of an unequivocal plea. The language used was also not indicated which is fatal to the case. The plea of guilty entered against the Appellant was equivocal and should not be allowed to stand. In any event the conviction entered was bad in law as there was no indication of the count for which the Appellant was found guilty and therefore the offence for which he was convicted is unclear. I am aware that the Appellant fully served the sentence meted against him in this case due to lack of diligence in pursuing the appeal by all parties concerned. On grounds of principle, however, I quash the conviction and set aside the sentence.

No retrial will be ordered in this case as it will serve no useful purpose.

Dated at Nairobi this 19th day of July 2006.

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LESIIT, J.

JUDGE

Read, signed and delivered in the presence of;

Appellant present

Mr. Ogutu for the Appellant

Mrs. Kagiri for the State

CC: Tabitha

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LESIIT, J.

JUDGE