

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NAKURU

Criminal Appeal 2 of 2006

[From Original Conviction and Sentence in Criminal Case No. 3384 of 2005 of the Chief Magistrate's Court at Nakuru – G.C. Mutembei – S.P.M]

ALBERT OCHIENG OMONDI APPELLANT

VERSUS

REPUBLICRESPONDENT

JUDGMENT

The appellant was charged with the offence of causing **grievous harm contrary to Section 234 of the Penal Code**. On 30th December 2005, the appellant was arraigned before the Chief Magistrate's court whereby a plea of guilt was recorded and the appellant was convicted and sentenced to eighteen (18) months imprisonment.

The appellant has appealed against the conviction and sentence on the grounds that the plea as recorded was not unequivocal.

During the hearing of this appeal, the learned Deputy Public Prosecutor, Mr. Gumo on behalf of the State conceded that the plea as recorded was not unequivocal.

I have examined the proceedings before the trial court and it is clear that the charge and all its essential ingredients were not explained to the appellant in his vernacular or some other language that he understood. The proceedings read;

*“Charge read over and explained to accused in English/Kiswahili who replies: - **“It is true.”**”*

It is not clear whether the charge was read in English and interpreted in Kiswahili and it is not also clear which was the language of the appellant.

In the case of **Baya –Vs- Republic [1984] K.L.R 657**, the essential ingredients in recording a plea are set out.

“It is mandatory that the substance of the charge and all its essential ingredients are explained to the accused in his vernacular or in some other language he understands. The accused own words in reply should be correctly translated into English and then carefully recorded.”

When an appellant has not been afforded a satisfactory trial, an order for a retrial is the proper order to be made.

In this case, I have taken into consideration the fact that the appellant has been in lawful custody from

30th December 2005 when he was arraigned in court and convicted.

I consider that to be adequate punishment and accordingly decline to refer this matter for retrial. The appeal is allowed, the conviction quashed and the sentence set aside. The appellant is set at liberty unless otherwise lawfully held.

Judgment read and signed at Nakuru on 14th July 2006.

MARTHA KOOME

JUDGE