REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU
Criminal Appeal 277 of 2003

(From original conviction and sentence in Criminal Case No.1257 of 2003 of the Chief Magistrate's Court at NAKURU – G. A. NDEDA, CM)

JOHN KIMANI NJOROGE……..…….APPELLANT

VERSUS

REPUBLIC…….…….RESPONDENT

JUDGMENT OF THE COURT

The appellant was charged with robbery with violence contrary to Section 296(2) of the Penal Code. The particulars of the offence were that on the 8th day of June, 2003 at Section 58 in Nakuru District within the Rift Valley Province jointly with others not before court, while armed with stones, robbed John Wagame Wambue of one bicycle valued at Kshs.4,500/- and at or immediately before or immediately after the time of such robbery used actual violence to the said John Wagema Wambue.

He pleaded guilty to the said charge. The trial magistrate recorded that she warned the appellant of the consequences of pleading guilty to such a charge and that notwithstanding, the appellant stated:-

"***I accept I robbed him of the bicycle."***

The prosecutor then stated the facts of the case in sufficient details. When the appellant was asked to admit or deny the facts he stated:-

"***Facts are true"***

The trial court then convicted him on his own plea of guilty. When he was given an opportunity to mitigate, the appellant stated:-

"***I have nothing to say".***

The appellant was thereafter sentenced to death as by law provided. The appellant was aggrieved by the said conviction and sentence and preferred an appeal to this court. He stated that at the time of taking of the plea, he was not himself as he had been badly beaten by members of the public. He further stated that the trial magistrate should have allowed him some time to seek medical treatment. He also said that he was not warned of the consequences of pleading guilty to the said charge. He urged the court to allow his appeal and order a retrial.

Mr. Mugambi, learned state counsel, opposed the said appeal. He submitted that the appellant had unequivocally pleaded guilty to the said charge, despite the warning that was given to him by the trial magistrate regarding the consequences of such a plea. He urged the court to dismiss the appeal.

Section 348 of the **Criminal Procedure Code** states as follows:-

"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 or legality of the sentence."

Notwithstanding that clear provision of the law, we allowed the appellant to argue his appeal simply because he was facing a death sentence. The procedure of taking a plea was well set out in ***ADAN VS REPUBLIC [1973] E.A. 445.*** In that case, Spry V,P, stated as follows:-

"***The courts have always been concerned that an accused person should not be convicted on his own plea unless it was certain that he really understood the charge and had no defence to it."***

This court wanted to ascertain whether the appellant was rightly convicted on his own plea of guilty and whether he actually understood the charge that he faced and the consequences of a conviction on the same. We have carefully studied the brief proceedings before the trial court. The charge was read over to the appellant and every essential ingredient thereof explained to him in a language that he understood. The record shows that it was in English but was translated to Swahili. He then said: "***It is true"***. The learned trial magistrate warned the appellant that he was liable to be sentenced to death if he pleaded guilty to the charge but the appellant emphatically responded – "***I accept I robbed him of the bicycle***".

In ***ADAN VS REPUBLIC (supra)*** the Court of Appeal stated that where a plea appeared to be one of guilty, it must be recorded in the words of the accused because the word "guilty" was a technical expression. By expressly stating that he accepted that he robbed the complainant of the bicycle, the appellant was pleading guilty to the charge and the learned trial magistrate faithfully recorded down the appellant's own words.

We are therefore satisfied that the appellant was properly convicted on his own plea of guilty, having understood the charge that he was facing and the consequences thereof; having been duly warned by the trial court. The offence was committed on 8th June, 2003 and the appellant was arrested on the same day. The plea was taken on 12th June, 2003 four days after his arrest. The appellant had sufficient time to think and reflect on his conduct and the plea that he was going to make and we believe that his conscience convicted him accordingly. We find no merit in his appeal and dismiss the same in its entirety.

DATED, SIGNED and DELIVERED AT Nakuru this 20th day of December, 2006.

D. MUSINGA

JUDGE

L. KIMARU

JUDGE

Judgment delivered in open court in the presence of the appellant and Miss Opati for the state.

D. MUSINGA

JUDGE

L. KIMARU

JUDGE