



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Njuguna v Republic (Criminal Appeal 4 of 2024)
[2025] KEHC 2676 (KLR) (Crim) (7 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 2676 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYANDARUA
CRIMINAL
CRIMINAL APPEAL 4 OF 2024
KW KIARIE, J
MARCH 7, 2025**

BETWEEN

BRANTON OTIENO NJUGUNA APPELLANT

AND

REPUBLIC RESPONDENT

(From the original conviction and sentence in Criminal cases Nos. E024 of 2023, E545 of 2023, E546 of 2023 and 547 of 2023 at the Senior Principal Magistrate's Court at Ol Kalou by Hon. R. Yator–Senior Principal Magistrate)

JUDGMENT

1. Branton Otieno Njuguna, the appellant herein, was convicted after pleading guilty to the offences of housebreaking contrary to section 304(1)(b) and stealing contrary to section 279(b) of the [Penal Code](#). He was also convicted of stealing contrary to section 268(1) as read with section 275 of the [Penal Code](#).
2. The particulars of the offence in criminal case number E024 of 2023 are that on November 6, 2022, at Karungu village, Mirangine sub-County, within Nyandarua County, the accused broke into Susan Wairimu Chege's dwelling house and stole one radio, two pairs of shoes, two wristwatches, a pair of socks, and Kshs. 500.00, all valued at Kshs. 10,000.00, being the property of Susan Wairimu Chege.
3. In criminal case number E545 of 2023, it is noted that on July 19th, 2023, at Karungu village, Mirangine sub-county, within Nyandarua County, the accused broke into the dwelling house of John Kimani Ndungu and stole one bicycle, valued at Kshs. 5,000.00, the property of John Kimani Ndungu.
4. The particulars in criminal case number E546 of 2023 states that on the 16th of July 2023, at Karungu village, Mirangine sub-County, within Nyandarua County, the accused broke into the dwelling house of Samuel Mwangi Kuria and stole two pairs of shoes, one leather jacket, one radio, one pair of trousers,



a pair of socks, one shirt, one belt, one shoe brush, one Skala body spray, one jacket, two flower suits, one knife, two radio speakers, and one tin of shoe polish, all valued at Kshs. 10,000.00, being the property of Samuel Mwangi Kuria.

5. In criminal case number E547 of 2023, on the night of July 16th, 2023, at Karungu village, Mirangine sub-County, within Nyandarua County, the accused stole one sweater, one pair of tight trousers, and one baby shawl, all valued at Kshs. 2,500.00, the property of Peris Watetu Ndegwa.
6. The appellant was sentenced to six months imprisonment in criminal case E024 of 2023, three years imprisonment on each limb in criminal case E545 of 2023, three years imprisonment on each limb in criminal case E546 of 2023, and two years' imprisonment in criminal case E547 of 2023. He was aggrieved and filed this appeal against the conviction and the sentence. He appeared in person and raised grounds of appeal as follows:
 - a. The learned trial magistrate erred in law and fact by convicting the appellant in the first instance.
 - b. That, being a first offender, the honourable court would extend for the second plea since he was not conversant with the court procedure.
 - c. That the honourable court did not warn me of the consequence of pleading guilty to the charges but misinformed me of being sentenced to only three (3) years' imprisonment if found guilty, only to get myself sent to serve fourteen (14) years in prison.
 - d. The officers who arrested me exploited the appellant's lack of know-how and warned me that if he defied their orders to plead guilty, he would face serious consequences, and he would have to lie low to avoid them.
 - e. The appellant respectfully requests that this honourable court allow the sentences to run concurrently in the interest of justice, as there is only one complainant, and the case involves a singular scenario.
 - f. The appellant's rights were violated because he was not provided with the correct information.
7. The state did not file any grounds of opposition or submissions.
8. This is the first appellate court. As expected, I have analyzed and evaluated all the evidence adduced before the lower court afresh. I have concluded, considering I neither saw nor heard any witnesses. I will be guided by the celebrated case of *Okeno v Republic* [1972] EA 32.
9. In the leading case of *Joseph Marangu Njau v Republic* [2015] eKLR, the Court of Appeal stated:

Whereas all the perils a guilty pleader embraces may not much matter in petty offences or in mere infractions which do not present much risk to life or liberty, much is at stake in the offences that attract more penal severe consequences. In the case before us, the balance of the appellant's natural life stood to be spent behind bars upon conviction.

Cognizant of the ever-present dangers of misjustice [sic] in guilty pleas, the courts have been vigilant to act upon and to uphold them only when they are clear, express, unambiguous and unequivocal. When a plea of guilty is challenged as not having been entered unequivocally, it becomes a matter of law that permits the superior courts to entertain appeals notwithstanding Section 348 of the CPC aforesaid. The predecessor of this Court considered and authoritatively laid down the manner in which pleas of



guilty should be recorded and the steps which should be followed, in the decades-old case of *Adan v Republic* [1973] EA 445, as follows;

- “(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;
- (ii) the accused’s own words should be recorded and if they are an admission, a plea of guilty should be recorded;
- (iii) 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;
- (iv) if the accused does not agree with the facts or raise any question of his guilt his reply must be recorded and change of plea entered;
- (v) if there is no change of plea a conviction should be recorded and a statement of the facts relevant to sentence together with the accused’s reply should be recorded.”

In this appeal, I will endeavour to determine whether the plea-taking in the four cases complied with the procedure outlined in *Adan* (supra).

10. The plea in the criminal case number E024 of 2023 was taken on the 11th day of January 2023. The charge was read to him in Kiswahili. When called upon to respond, he said it was true. The facts were read to him, and he said they were correct.
11. The facts that were read, and he confirmed that they were correct, supported the charge.
12. The same trend is seen in criminal case numbers E545, E546, and 547 of 2023.
13. Therefore, I find that the appellant’s plea in all four cases was unequivocal.
14. Section 348 of the [Criminal Procedure Code](#) provides 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.
15. Having established that the plea was correctly recorded, I will therefore endeavour to verify the legality of the sentence, bearing in mind that an appellate court would only interfere with the trial court’s sentence when sufficient circumstances exist that justify varying the trial court’s order. These circumstances were well illustrated in the case of *Nillson v Republic* [1970] E.A. 599, as follows:

The principles upon which an appellate court will act in exercising its jurisdiction to review sentences are fairly established. The court does not alter a sentence on the mere ground that if the members of the court had been trying the appellant, they might have passed a somewhat different sentence and it will not ordinarily interfere with the discretion exercised by a trial Judge unless as was said in *James v Rex*[1950], 18 EACA 147, it is evident that the Judge has acted upon some wrong principle or overlooked some material factor. To this, we would also add a third criterion, namely, that the sentence is manifestly excessive in view of the circumstances of the case. *R v Shershewity*[1912] C.CA 28 T.LR 364.
16. The offences the appellant was charged with did not form the same transaction, so the court could order the sentences to run concurrently. The only area the learned magistrate erred is with respect to



the sentences in criminal case numbers E024 of 2023, E545 of 2023, and E546 of 2023. I set aside the sentence on each case and order as follows:

- a. In criminal case E024 of 2023, the appellant will serve six months imprisonment for each limb. The sentence will run concurrently.
 - b. In criminal case E545 of 2023, the appellant will serve three years imprisonment for each limb. The sentence will run concurrently.
 - c. In criminal case E546 of 2023, the appellant will serve three years imprisonment for each limb. The sentence will run concurrently.
 - d. In criminal case E547 of 2023, the appellant will serve two years imprisonment.
 - e. The sentences in the four cases will run consecutively.
17. The appeal against the conviction is dismissed; however, regarding the sentences, it is successful to the extent indicated in the orders hereinabove.

DELIVERED AND SIGNED AT NYANDARUA THIS 7TH DAY OF MARCH 2025

KIARIE WAWERU KIARIE

JUDGE

