Hassan v Republic (Criminal Appeal E032 of 2024)
[2025] KEHC 4227 (KLR) (4 April 2025) (Judgment)

Neutral citation: [2025] KEHC 4227 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT BUSIA

CRIMINAL APPEAL E032 OF 2024

WM MUSYOKA, J

APRIL 4, 2025

BETWEEN

ADAN DARA HASSAN ..... APPELLANT

AND

REPUBLIC ..... RESPONDENT

(Appeal from conviction and sentence by Hon. PA Olengo, Senior Principal Magistrate, SPM, in Busia CMCTRC No. E367 of 2024, of 7th June 2024)

JUDGMENT

1. The appellant, Abdi Dara Hassan, had been charged before the primary court, on 2 counts. One, of permitting uninsured motor vehicle on a public road, without insurance certificate, contrary to section 4(1), as read with section 4(2) of the Insurance (Third Party Risks) Act, Cap 405, Laws of Kenya. Two, of permitting an unlicensed driver, contrary to section 30(2), as read with section 30(6) of the *Traffic Act*, Cap 403, Laws of Kenya.

2. The particulars of the 2 offences were that on 16th May 2024, along the Busia-Kisumu Road, within Busia County, being the owner of motor vehicle registration number UAM314P, Honda CRV, the appellant permitted the said vehicle to be driven along the said road without a certificate of insurance, and to be driven by an unlicensed driver.

3. Plea was taken on 7th June 2024. The appellant answered, "It is true," to both counts after they were read out to him. He was convicted on his own plea, and fined Kshs. 1,000.00 or 2-weeks imprisonment in default of fine, on each count.

4. The appellant was aggrieved, and brought the instant appeal, founded on several grounds. He states that he was convicted on an equivocal plea, as the particulars of the charge were not read out to him; an interpreter was not provided yet he was unfamiliar with both English and Kiswahili; the need for

legal representation was not explained to him; and the evidence was not evaluated and analysed, and the sentence was excessive.

5. Directions were given on 28th January 2025, for canvassing of the appeal by way of written submissions. The appellant submitted in writing, while the respondent did not submit at all.

6. In his written submissions, the appellant argues around the plea, the basis of his conviction, being equivocal, and that that enables him to appeal despite section 348 of the *Criminal Procedure Code*, Cap 75, Laws of Kenya, which provides that there is no right of appeal from a conviction founded on a guilty plea. For the procedural requirements for a proper recording of a plea of guilty, he cites Adan vs. Republic [1973] EA 445 (Sir William Duffus P, Spry VP & Mustafa JA). On the need for the facts of the case to be read out to the accused, to confirm his guilty plea, he cites Judy Nkirote vs. Republic [2013] eKLR [2013] KEHC 4809 (KLR) (Lesiit, J), where the prosecutor did not read the facts to the accused, but merely stated that the facts were as per the charge, and it was held that that was not good enough, and a plea recorded after that was held to be equivocal. He also relies on Ahmedi Ali Dharamsi Sumar vs. Republic [1964] EA 481 (Sir Daniel Crawshaw, Sir Clement De Lestang & Duffs JJA), Albina Suzan Mwema vs. Republic [2020] eKLR (Ngenye-Macharia, J), Ngumbao Mjori vs. Republic [2018] eKLR (Chepkwony, J) and Felix Mbevo vs. Republic [2016] eKLR (Mutende, J).

7. So, what happened here? The appellant was arraigned on 7th June 2024. The proceedings were conducted, according to the record, in a mix of English and Kiswahili. It indicates that when the charge was read to him, the appellant responded in Kiswahili, but the words are recorded in English, "It is true," with respect to both counts. The prosecutor is then recorded as remarking, "Facts as per charge sheet." The court then proceeded to convict and sentence the appellant on both counts.

8. For avoidance of doubt, this is what the record for 7th June 2024 reflects:

> "7/6/2024
>
> Before: Hon. PA Olengo – Senior Principal Magistrate
>
> State Counsel – Mose
>
> Court assistant – Annette/Mohamed
>
> Interpretation – English/Kiswahili"
>
> The substance of the Charges(s) and every element thereof has been stated by the Court to the Accused person in the language he/she understands, who being asked whether he/she admits or denies the truth of the charge(s) replies in Kiswahili
>
> Count I
>
> Accused
>
> It is true.
>
> Count II
>
> Accused
>
> It is true.
>
> Court Prosecutor
>
> Facts as per charge sheet.
>
> Court

Plea of guilty entered and Accused is convicted of his own plea. Fined Ksh. 1000 or 2 weeks imprisonment in default of fine on each count. Right of Appeal 14 days.

Hon PA Olengo

Senior Principal Magistrate

7/6/2024"

9. What should happen at arraignment or plea-taking, particularly where the accused is pleading guilty, is provided for under section 207 of the *Criminal Procedure Code*, which provides as follows:

> " 207. Accused to be called upon to plead
>
> (1) The substance of the charge shall be stated to the accused person by the court, and he shall be asked whether he pleads not guilty, guilty or guilty subject to a plea agreement.
>
> (2) If the accused person admits the truth of the charge otherwise than by a plea agreement his admission shall be recorded as nearly as possible in the words used by him, and the court shall convict him and pass sentence upon or make an order against him, unless there appears to it sufficient cause to the contrary:
>
> Provided that after conviction and before passing sentence or making any order the court may permit or require the complainant to outline to the court the facts upon which the charge is founded."

10. What do I understand section 207 of the *Criminal Procedure Code* to be saying? There are 3 parts to it.

11. The first part is in section 207(1), and it is about the reading of the charge to the accused person. The law talks about the substance of the charge being stated to the accused, and him being invited to plead to it, in terms of either guilty, not guilty or subject to plea agreement. The charge is in 2 parts, there is the charge itself and the particulars of the offence. The 2 parts combined is what is read or stated to the accused person, in compliance with section 207(1) of the *Criminal Procedure Code*.

12. The second part is in section 207(2), and it is about how the court records the plea, before convicting and sentencing the accused, in terms of putting down or recording the statement he makes in reply or response to the charges as read out to him. This is about a guilty plea. The court is required to record the admission by the accused, as nearly as possible, in the words used by him. it would be after doing that that the court should proceed to convict and sentence.

13. The third part is in the proviso to section 207(2), and it is about what the court may do, in between convicting the accused and sentencing him. It provides for an interlude where the court may permit or require the complainant or prosecutor to give an outline, to the court, of the facts upon which the charge is founded. This would appear to be intended to be a statement of the facts to the court, to enable it to evaluate the sort of sentence to impose, based on the facts of the case.

14. The courts have addressed what should happen at plea-taking, and particularly where the accused is pleading guilty, in several cases. The most celebrated among them is Adan vs. Republic [1973] EA 445 (Sir William Duffus P, Spry VP & Mustafa JA), which has been cited with approval over the years. See also Wanjema vs. Republic [1971] EA 493 (Trevelyan, J), Ombena vs. Republic [1981] eKLR [1981] KLR 450 (Law, Miller & Potter, JJA) and Paul Nakua Eyan vs. Republic [2008] KECA 118 (KLR)

(Omolo, Githinji & Aluoch, JJA). That decision did not claim to be interpreting section 207 of the *Criminal Procedure Code*, or any of its equivalents or predecessors, for that provision is not mentioned there. What I can see is a reference to section 281 of the *Criminal Procedure Code*, but I cannot tell whether that provision was equivalent to section 207 as recited above. That decision is more about the practice at plea-taking, as opposed to the law around it.

15. This is how that discussion began:

> "It is true that the *Criminal Procedure Code* only deals very briefly with the matter, s. 281 merely saying that the plea is to be recorded and that the accused may be convicted thereon ... The courts have always been concerned that an accused person should not be convicted on his plea unless it was certain that he really understood the charge and had no defence to it. The danger of a conviction on an equivocal plea is obviously greatest where the accused is unrepresented, is of limited education, and does not speak the language of the court. For this reason, it has been a rule of practice where a plea appears to be one of guilty, it must be recorded in the words of the accused person. "

16. The court then went on to discuss the evolving practice in the East African region:

> "In Tanganyika, the further precaution was adopted of requiring the prosecution to outline the facts of the alleged offence after recording of the plea and before the entry of the conviction and of asking the accused if he agreed with it or wished to comment on it, and this became the accepted and general practice (see Waiziri Musa v. R (1954) 2 TLR (R.) 30).
>
> It appears that no such practice became general in Kenya, although there is one reported case (Malinda Muvua v. R. (1956) 23 EACA 590) which shows it to have been followed, and it was recommended by MOSDELL, J, in Kibilo v. Republic [1971] EA 101. Since we heard this appeal, our attention has been drawn to Criminal Appeal No. 743 of 1972 of the High Court, in which the Chief Justice and MULI, J., expressed approval of it.
>
> We think the practice is desirable and should generally be followed throughout East Africa. So that there may be no doubt in the matter, we set out the procedure in the following paragraph. We would add also, with respect, that we are in complete agreement with a further observation by the Chief Justice and MULI, J., also in Criminal Appeal No. 743, that a plea should not be taken unless the prosecution is in a position to state the facts. An adjournment between the plea and the statement of the facts ought never be necessary and is most undesirable."

17. The court then proceeded to lay down what it considered should be the practice or procedure in Kenya for handling pleas of guilty, in the following terms:

> "When a person is charged, the charge and the particulars should be read out to him, so far as possible in his own language, but if that is not possible, then in a language which he can speak and understand. The magistrate should then explain to the accused person all the essential ingredients of the offence charged. If the accused person then admits all those essential elements, the magistrate should then formally enter a plea of guilty. The magistrate should then ask the prosecutor to state the facts of the alleged offence and, when the statement is complete, should give the accused an opportunity to dispute or explain the facts or to add any relevant facts. If the accused does not agree with the statement of facts or asserts additional facts which, if true, might raise a question as to his guilt, the magistrate should record a change of plea to "not guilty" and proceed to hold a trial, if the accused does

not deny the alleged facts in any material respect, the magistrate should record a conviction and proceed to hear any further facts relevant to sentence. The statement of facts and the accused's reply must, of course, be recorded."

18. In the succeeding paragraph the court explained the objectives served by the statement of facts, as follows:

> " The statement of facts serves 2 purposes: it enables the magistrate to satisfy himself that the plea of guilty was really unequivocal and that the accused has no defence, and it gives the magistrate the basic material on which to assess sentence. It not frequently happens that an accused person, after hearing the statement of facts, disputes some particular fact or alleges some additional fact, showing that he did not really understand the position when he pleaded guilty: it is for this reason that it is essential for the statement of facts to precede the conviction."

19. The practice, suggested in Adan vs. Republic [1973] EA 445 (Sir William Duffus P, Spry VP & Mustafa JA), departs from the procedure set out in section 207 of the *Criminal Procedure Code*, in significant aspects, and it is in that respect that I have observed above that the court in that decision was not purporting to interpret that provision. That departure is largely with respect to the proviso to section 207(2) of the *Criminal Procedure Code*. Firstly, the Code does not make mandatory that a statement of facts be read or made, it is left to the discretion of the court or the prosecutor, but the court, in Adan vs. Republic [1973] EA 445 (Sir William Duffus P, Spry VP & Mustafa JA), suggested that it was essential. Secondly, the statement of facts, under the Code, is meant to be for the benefit of the court, and not the accused, but the court, Adan vs. Republic [1973] EA 445 (Sir William Duffus P, Spry VP & Mustafa JA), suggested that it was more critical for the accused person. Thirdly, under the Code, the statement is read after conviction, and before sentence, the court , in Adan vs. Republic [1973] EA 445 (Sir William Duffus P, Spry VP & Mustafa JA), suggested that it ought to be made before the conviction.

20. Most of the appeals, that come from the trial courts to the High Court, appear to revolve around that conflict between the procedure in the proviso to section 207(2) of the *Criminal Procedure Code* and that suggested in Adan vs. Republic [1973] EA 445 (Sir William Duffus P, Spry VP & Mustafa JA), where some trial courts have stuck to the statutory procedure under section 207(2) of the *Criminal Procedure Code*, and eschewed the practice suggested in Adan vs. Republic [1973] EA 445 (Sir William Duffus P, Spry VP & Mustafa JA). Trial courts invariably apply the proviso to section 207(2) of the *Criminal Procedure Code* to the letter or follow Adan vs. Republic [1973] EA 445 (Sir William Duffus P, Spry VP & Mustafa JA).

21. So, how did the trial court handle the situation?

22. Let me start with section 207(1) of the *Criminal Procedure Code*, with respect to the substance of the charge being stated to the accused person by the court, and he being asked to plead to it. The trial record indicates that that was done. The charge and its particulars were stated or read out to the appellant, on 7th June 2024. There was compliance. The appellant does not raise issue with that.

23. Regarding the principal part of section 207(2) of the *Criminal Procedure Code*, that is excluding the proviso, the requirement is that where the accused person admits the truth of the charge, otherwise than by a plea agreement, his admission should be recorded as nearly as possible in the words used by him. The response by the appellant is recorded in the trial record, as "It is true." There could be some issue there, given that the record reflects that he responded in Kiswahili to the charge, yet the trial court did not record his Kiswahili response, for the recorded response is in English. Some conflict there. The

appellant, in his petition of appeal, takes issue with that, as he argues that he was neither conversant with both languages, that is English and Kiswahili, and implies that a translation in Somali should have been provided.

24. Regarding the making of the statement of facts, in accordance with the proviso to section 207(2) of the *Criminal Procedure Code*, no statement of facts as such was made. Instead, the prosecutor indicated to the court that he was relying on the facts in the particulars of the offences. The court proceeded to convict and sentence after that. The appellant was not invited to react to that remark, that the facts relied on were as per the particulars of the charge. The statement of facts was made before conviction and sentence. The appellant has an issue with that, particularly the remark that the facts were as per the particulars of the charge.

25. The trial court largely applied section 207(2) of the *Criminal Procedure Code*, instead of following Adan vs. Republic [1973] EA 445 (Sir William Duffus P, Spry VP & Mustafa JA). The only difference was that it entertained the statement of facts before it convicted, instead of convicting first, and then receiving the statement of facts before sentence.

26. 3 of the 5 grounds of appeal turn on issues around the procedure and practice, on the taking or recording of the plea where the accused is admitting the charge, as stated in section 207(2) of the *Criminal Procedure Code* and Adan vs. Republic [1973] EA 445 (Sir William Duffus P, Spry VP & Mustafa JA).

27. The first ground is about the plea of guilty being equivocal, for the court convicted and sentenced the appellant without having the particulars of the 2 counts read out to him. I cannot pretend to understand what that ground is about. The particulars of the charge are set out in the charge sheet. The charge, as indicated above, has 2 components, the charge itself and the particulars of the offence charged. The 2 of them are read together. I have set out the charges in paragraph *1* of this judgement, and the particulars of the offences in paragraph 2 of the judgement. I understand the appellant to be saying that the particulars that I have recited in paragraph *2* above were not read out to him. I would have no way of establishing that, from the trial record, for what is usually recorded is that the charges were read, and that would mean the charges themselves plus the particulars of the offences charged.

28. What I suspect is that the appellant is talking about the facts upon which the charge is founded, which are the subject of the proviso to section 207(2) of the *Criminal Procedure Code*. His written submissions are silent on the particulars of the offence, but loud on the facts of the case. The 2 are different. The particulars of the offence are part of the charge, and are set out in the charge sheet, and these are stated or read to the accused under section 207(1) of the *Criminal Procedure Code*. The facts upon which the charge is founded are provided for under the proviso to section 207(2) of the *Criminal Procedure Code*, and they are not part of the pleadings in the charge sheet, but are to be found in the material in the file held by the prosecutor. They are not in the court file or are not part of the court record, hence the need for them to be read out to the court so that they can be placed on record, to provide a basis for the court to consider sentence.

29. Be that as it may. The appellant relies on Adan vs. Republic [1973] EA 445 (Sir William Duffus P, Spry VP & Mustafa JA), for the submission that the facts upon which the charges were founded were not read to him, and that that was fatal to his conviction. The record reflects that the prosecution adopted the particulars of the offence, set out in the charge sheet, as the facts upon which the charge is founded. There is a sense in which it can be argued that the facts upon which the charge were founded were read out. He cites Judy Nkirote vs. Republic [2013] eKLR [2013] KEHC 4809 (KLR) (Lesiit, J), Albina Suzan Mwema vs. Republic [2020] eKLR (Ngenye-Macharia, J), Ngumbao Mjori vs. Republic [2018] eKLR (Chepkwony, J) and Felix Mbevo vs. Republic [2016] eKLR (Mutende, J), to argue that reliance

on the particulars of the offence was not good enough, and that the facts, which the prosecution would have presented before the court, were the matter to go to full trial, should have been outlined.

30. There is an issue, apparent from the trial court record, which the appellant has not articulated, but which I suspect is what he is aggrieved about. The remark by the prosecutor, that the facts were as per the particulars of the charge, was made after the appellant had pleaded to both counts and before the court convicted. Going by Adan vs. Republic [1973] EA 445 (Sir William Duffus P, Spry VP & Mustafa JA), the court ought to have invited the appellant to comment on the said particulars. The trial court did not.

31. Should the court be faulted? There are 2 aspects. The issue of relying on the particulars of the offence as the facts upon which the charges were founded; and the appellant not being invited to respond to the remark that the prosecution was relying on the said particulars, as its facts upon which the charges were founded.

32. On the first aspect, relying on the particulars of the offence as the facts upon which the charges were founded, the courts, in Judy Nkirote vs. Republic [2013] eKLR [2013] KEHC 4809 (KLR) (Lesiit, J), Albina Suzan Mwema vs. Republic [2020] eKLR (Ngenye-Macharia, J), Ngumbao Mjori vs. Republic [2018] eKLR (Chepkwony, J) and Felix Mbevo vs. Republic [2016] eKLR (Mutende, J), have held that reference to the particulars of the offence, as set out in the charge sheet, as the facts of the case, is not adequate, and it does not amount to a sufficient disclosure of the facts of the case to the accused person. I beg to disagree, with respect. Whether the particulars of the charge are adequate as facts of the case would vary from case to case. In simple and straightforward cases, such as in the instant one, they would be adequate. In more complex cases, such as those charging homicide, defilement, various thefts, etc, more facts may need to be presented.

33. In the instant case, Count 1 the charge was that of permitting an uninsured motor vehicle on a public road without a certificate of insurance. The particulars of the offence were that on 16th May 2024, at about 18:54 hours, along Busia-Kisumu Road, in Busia County, being the owner of motor vehicle registration number UAM314P make Honda CRV, the appellant had permitted it to be driven on the said road without a certificate of insurance. These particulars of the offence would have been the same facts that would have been presented at trial. They were clear enough of the offence that he was facing, the facts that formed the basis for the charge. The particulars of the offence were adequate for the purposes of the facts upon which the charge was founded. The same would apply to Count II. The charge was permitting an unlicensed driver to drive that vehicle, and the particulars were given as to when and where that happened.

34. The second aspect was about the appellant not being invited to respond to the remark by the prosecutor that the facts of the case were as per the particulars of the charge. The omission could be understandable, for the said particulars were, no doubt, read as part of the charge, and the appellant had already admitted them. Secondly, and more fundamentally, the proviso to section 207(2) of the *Criminal Procedure Code* does not require that the said facts be read out to the accused. In the first place, it does not even make it mandatory that the said facts be read out at all. They should be read out at the discretion of the court, or at the request of the complainant. There is no statutory requirement that they should be read out to the accused person. Therefore, going by the proviso to section 207(2) of the *Criminal Procedure Code*, the trial court was not obliged to invite the appellant to respond to them. The law of procedure, around this, remains the proviso to section 207(2) of the *Criminal Procedure Code*, the decision in Adan vs. Republic [1973] EA 445 (Sir William Duffus P, Spry VP & Mustafa JA) does not, and cannot, override it, for it merely proposes a general practice.

35. The other thing should be consideration of the environment, that prevailed when that decision was made, in 1973, more than 50 years ago. The concerns then, which emerged from the excerpts of that judgement, which I have recited above, the circumstances which prevailed then raised concerns about how accused persons who were unrepresented, uneducated and did not speak the language of the court, would be impacted, and their rights affected. A lot of progress has been made in universalisation of education in Kenya and the teaching of English and Kiswahili, which are the languages of the court. The ignorance and lack of knowledge that prevailed, in 1973, cannot be said to be still prevailing today, to require an untrammelled application of Adan vs. Republic [1973] EA 445 (Sir William Duffus P, Spry VP & Mustafa JA).

36. The second ground, around section 207 of the *Criminal Procedure Code*, is about the language used at trial. The provision does not talk about language. The closest it comes to it is in section 207(2), where it is required that a plea of guilty should "be recorded as nearly as possible in the words used by" the accused person. That should be words in the language that the accused uses at arraignment or for the purposes of the trial.

37. Language is a central issue in criminal justice, and criminal proceedings ought to be conducted in a language that would enable the accused person to understand, sufficiently enough to enable him to participate in the proceedings, by way of cross-examining witnesses and making a statement in his defence. *The Constitution* of Kenya has addressed it, at Article 50, by making the language of trial a matter of fair trial rights, so that where an accused person is not familiar with the language of the court, then the court ought to arrange for a translator or interpreter for the language that he chooses to use at trial. There are similar provisions in the *Criminal Procedure Code*. The languages of the court in Kenya are English and Kiswahili, and where an accused person is not fluent in the 2, interpretation must be arranged for.

38. Adan vs. Republic [1973] EA 445 (Sir William Duffus P, Spry VP & Mustafa JA) dealt with the aspect of language, precisely because section 207(1) of the *Criminal Procedure Code*, requires the reading of the charge to the accused person. The court, in Adan vs. Republic [1973] EA 445 (Sir William Duffus P, Spry VP & Mustafa JA), emphasised on the charge and the particulars being read out to the accused, so far as possible, in his own language, and where that is not possible, in a language which he can speak and understand.

39. The appellant complains that the proceedings were conducted in languages that he did not understand. The record of 7th June 2024, when plea was taken, reflects that the languages used, for the purpose of that trial, was English and Kiswahili, with translation from one to the other. It also reflects that, after the charges were read, the appellant responded in Kiswahili. However, the exact Kiswahili words that he used, if indeed he used Kiswahili, were not recorded. His replies were recorded in English. There is untidiness there. It is possible that he responded in Kiswahili, but the court recorded the reply in English, given that court records in Kenya are kept in English. However, the record speaks for itself, and that calls for courts to be as scrupulous as possible in what they record in the court file, for the record kept is permanent, and it is what the appellate courts would go by, for there would be no opportunity for the court recording to explain itself.

40. Anyhow, that is not even what the appellant is complaining about. His issue is that the language that he should have been allowed to use was Somali. There is nothing on record to indicate whether he requested to use Somali, and his plea was turned down. I also take judicial notice of the fact that, in criminal proceedings, trial courts, the High Court being one, are sensitive to circumstances of parties with language challenges, and the prosecution and the police would also be, and would often bring out that fact to the court and ask for arrangements to be made for a translator. The fact that that did

not arise, at trial, in the instant case, would mean that it was not an issue, and the appellant did not require a translator.

41. I would go further, and reiterate what I have stated above, that a lot of progress has been made in the field of education. The successive independence governments have gone out of their way to make it universal. The 2 languages of the court are compulsory subjects at both the primary and secondary levels of education. These are matters that are in the public domain. Hardly any Kenyan in 2024/2025 would be unfamiliar or lack proficiency in either of the 2 languages. Indeed, from my trial experience at Busia, interpreters into other languages are only necessary in 3 cases: foreigners from countries where English and Kiswahili are not spoken, local elderly women above 70 years of age, and some Ugandans. The other categories of Kenyans are proficient in both languages. The appellant, according to the charge sheet, is a Kenyan. I am not persuaded that there was a language barrier issue, for if there was, it ought to have arisen at trial.

42. I find and hold that the plea of guilty, as recorded by the trial court, was unequivocal.

43. Away from section 207 of the *Criminal Procedure Code* and Adan vs. Republic [1973] EA 445 (Sir William Duffus P, Spry VP & Mustafa JA), the other ground is around the omission by the trial court to inform the appellant of his right to legal representation before proceeding with the matter. The record is silent on whether that right was communicated to the appellant, yet it is demanded by *the Constitution*, at Article 50(2)(g). The omission, no doubt, amounted to a contravention and non-compliance. Should it vitiate the trial? I do not think it should. The offences in question were minor, and did not come with complexities at trial, that would have seriously imperilled the appellant, regarding the sentences available, and as ultimately meted out.

44. The last ground is on evidence not being evaluated and analysed, hence arriving at the wrong conviction and excessive sentence. The appellant pleaded guilty to the charge. No evidence was adduced, for a full trial was not conducted. The statement of the facts, permitted under the proviso to section 207(2) of the *Criminal Procedure Code*, was not mandatory, and even where such a statement was made, it did not amount to adducing of evidence, and there is no legal requirement for those facts, made at that stage, to be evaluated and analysed in a ruling. The conviction was founded on the admission of guilt by the appellant, and not on the facts of the case.

45. Overall, I find no merit in the appeal herein, and I hereby dismiss it. The conviction is affirmed and the sentence confirmed. It is so ordered.

DELIVERED, DATED AND SIGNED IN OPEN COURT, AT BUSIA THIS 4TH DAY OF APRIL 2025.

W MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant.

Advocates

Mr. Rodgers Obimba, instructed by BM Ouma & Company, Advocates for the appellant.

Mr. Tony Onanda, instructed by the Director of Public Prosecutions, for the respondent.