



REPUBLIC OF KENYA



**Ouma v Republic (Criminal Appeal E014 of 2024)
[2025] KEHC 8733 (KLR) (20 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 8733 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KITALE
CRIMINAL APPEAL E014 OF 2024
AC MRIMA, J
JUNE 20, 2025**

BETWEEN

JAMES OCHIENG OUMA APPELLANT

AND

REPUBLIC RESPONDENT

*(Appeal arising out of the conviction and sentence of Hon. D.K Mtai (SPM) in Kitale
Chief Magistrate's Court Criminal Case No. 4849 of 2019 delivered on 16th October 2020)*

JUDGMENT

Introduction

1. James Ochieng Ouma, the Appellant herein, was charged with two offences. In count 1 he faced the charge of theft contrary to 278A of the [Penal Code](#).
2. The particulars of the offence are that: on the 6th day of October 2017 at Yuya farm within trans-Nzoia County with others not before Court, stole one motorcycle make TVS Star HLX MAG 100C valued at Kshs. 91,000/- the property of David Chemanyuru Wanyonyi.
3. In Count II, the Appellant faced the charge of preparation to commit a felony contrary to section 308 of the [Penal Code](#).
4. The particulars of the charge are that on the 10th day of August 2019 at Yuya farm within Trans-Nzoia County, jointly with others not before Court, was found armed with dangerous weapons namely 5 pangas and 4 iron bars with intent to commit a felony namely robbery with violence.
5. The Appellant faced the alternative charge of handling stolen goods contrary to section 322(1)(2) of the [Penal Code](#).



6. The particulars of the alternative charge are that on the 12th day of August 2019 at Yuya of Matisi Farm within Trans-Nzoia County otherwise than in the course of stealing dishonestly retained one motorcycle make TVS Star HLX MAG 100CC while knowing or having reason to believe it to be stolen.
7. Upon being arraigned in Court, the Appellant pleaded guilty. However, on subsequent arraignment, he changed his plea to 'not guilty'.
8. Consequently, the trial commenced. The prosecution called a total of 8 witnesses. Before the defence case could be heard, the Appellant indicated that he wished to plead guilty to all the charges.
9. Upon considering the Probation Report the trial court noted that the Appellant was first offender. However, in view of the fact that the offences were rampant within the region, he was sentenced to 5 years in Count 1 and to 7 years in Count II and the sentences were ordered to run consecutively.

The Appeal

10. The Appellant was dissatisfied with his conviction and sentence. Through undated Amended Petition of Appeal, he urged this Court to set aside his conviction and sentence on the following grounds;
 1. That I pleaded not guilty at the trial.
 2. That the trial magistrate erred in both and fact (sic) by shifting the burden of proof to I the Appellant.
 3. That the trial magistrate erred in both and fact (sic) by convicting I the appellant by relying on circumstantial evidence.
 4. That the trial magistrate erred in both and fact (sic) by convicting the appellant in absence of key witnesses.
 5. That the trial magistrate erred in both and fact (sic) by convicting I the appellant by nit taking in that u was not identified in any parade.
 6. That the trial magistrate erred in both and fact (sic) by rejecting my defence without cogent reason.
11. The Appellant filed written submissions where he embellished the grounds of appeal.

The Respondent's Case

12. The State challenged the Appeal through written submissions dated 25th July 2025. It simply asserted that the Appeal should not be entertained or allowed since it offends section 348 of the *Criminal Procedure Code*.

Issues for Determination

13. The issues that arise for determination are;
 - i. Whether the Appellant's own guilty plea was lawfully procured.
 - ii. Depending on (i) above, the merits of the Appeal.



Analysis and Determination.

14. This being a first appeal, the duty of this Court is to re-consider and to re-evaluate the evidence adduced before the trial Court with a view to arriving at its own independent conclusions and findings (See: Okono vs. Republic [1972] EA 74). In doing so, this Court is required to take cognizance of the fact that it neither saw nor heard the witnesses as they testified before the trial. As was observed in the case of Ajode -vs- Republic [2004] KLR 81, an appellate Court must make due allowance to that end.
 - i. Whether the Appellant's own guilty plea was lawfully procured.
 - ii. Whether the plea taking process was done within the confines of the law.
15. The question whether the Appellant's own guilty plea was lawful is an invitation for this Court to interrogate the entirety of the plea taking process.
16. Plea taking is an integral part of any trial process. Its importance cannot be gainsaid. Where an accused person does not comprehend or is coerced into pleading a certain way, miscarriage of justice ensues from that time onwards.
17. In Criminal Appeal 365 of 2011, John Muendo Musau -vs- Republic [2013] eKLR, the Court of Appeal, in reference to the decision in Adan -vs- Republic discussed the process of plea taking as follows;
 - (5) On this argument, we wish to state that we have outlined the procedure followed before the trial court at the time of taking the plea. The legal principles to be applied in plea taking in all criminal cases were well enunciated in the locus classicus case of Adan vs Republic [1973] EA 445 where the Court held:-
 - 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 raises 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 facts relevant to sentence together with the accused's reply should be recorded."
18. With the foregoing, I now turn to the proceedings before the trial Court.
19. As has been highlighted in the introductory paragraphs of this Judgment, the Appellant was first arraigned in Court on 12th September 2019. The charges and the substance thereof were read out to him. He pleaded guilty.
20. The facts of the charge were deferred to the following day, the 13th of September 2019. On that day, upon being read the charges and the particulars, the accused changed his plea to that of 'not guilty' on both counts.
21. The prosecution then sought leave to amend the charge sheet. The charges and the substance thereof were once again read to the Appellant. He pleaded not guilty on all counts.



22. The prosecution's case then kicked off on 10th December 2019. It is after the testimony of Okumu Otieno Moses, PW8, that the Appellant changed his mind. On 8th October 2020, the Appellant prayed that the charges be read out to him all over again after which he pleaded 'ni kweli' to both Count I and II as well as the alternative count.
23. The Court entered plea of guilty on all counts and scheduled the case for 16th October 2020. On that day the accused confirmed that he still admitted the charges.
24. The prosecution then articulated to the Appellant the comprehensive facts of the case to which he responded

'I have understood the facts, the facts are true.'
25. Accordingly, he was convicted on own guilty plea. On mitigation, he sought the court's forgiveness. He claimed that his family depends on him but the trial court, upon assessing the circumstances of the case sentenced him to 5 years in Count 1 and to 7 years in Count II, to run consecutively.
26. From the proceedings at the trial court, it is evident that plea taking was done on three different occasions. In all of them, the charge and the substance thereof were explained to the Appellant scrupulously.
27. This Court is convinced the process flawless. The trial court abided by principles enunciated by the Court of Appeal in John Muendo Musau -vs- Republic (supra).
28. The Appellant, therefore, pleaded guilty lawfully and the attendant conviction was proper. This Court cannot fault it in any manner.
29. As regards the sentence, the Appellant was handed down a five-year sentence in count I and 7-year sentence in Count II.
30. Section 278A of the [Penal Code](#) provides as follows;

278A. Stealing motor vehicle

If the thing stolen is a motor vehicle within the meaning of the [Traffic Act](#) (Cap. 403), the offender is liable to imprisonment for seven years.
31. As regards count II, the relevant provision is section 308(1) of the [Penal Code](#). It provides as follows;

308. Preparations to commit felony

(1) Any person found armed with any dangerous or offensive weapon in circumstances that indicate that he was so armed with intent to commit any felony is guilty of a felony and is liable to imprisonment of not less than seven years and not more than fifteen years.
32. From the foregoing, it is clear the Appellant benefited from a favourable exercise of discretion in respect to the offence of stealing. As regards, the offence of preparation to commit a felon, he was accorded the minimum prescription of the sentence therein. The sentences ran consecutively since there was no evidence that the two offences were related as to be said they were committed in the same transaction.
33. In the end, this Court returns the verdict that the Appeal is without merit and is hereby dismissed in its entirety. For avoidance of doubt, the trial court's conviction and sentence were proper and are hereby upheld.



34. It is so Ordered.

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 20TH DAY OF JUNE, 2025.

A. C. MRIMA

JUDGE

