



**Kimati v Republic (Miscellaneous Application E049 of 2025)
[2025] KEHC 10422 (KLR) (17 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10422 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
MISCELLANEOUS APPLICATION E049 OF 2025**

REA OUGO, J

JULY 17, 2025

BETWEEN

VICTOR NAIBEI KIMATI APPLICANT

AND

REPUBLIC RESPONDENT

(FROM ORIGINAL CRIMINAL CASE FILE NO E572 OF 2024 AT CM'S COURT SIRISA)

RULING

1. Victor Naibei Kimati, the applicant, has filed a motion seeking to be given a non-custodial sentence on the remaining period of his sentence. His application is supported by his affidavit. He depones as follows: he was charged and convicted for the offence of Grievous Harm contrary to Section 234 of the *Penal Code*. He pleaded guilty to the charge and was sentenced to three years' imprisonment. He avers that whilst in prison, he has taken a positive approach and taken advantage of the opportunities available by studying theology and carpentry work as part of his preparation for reintegration back into society.
2. The applicant informed the court at the hearing that the court should consider the period he has been in remand, he left behind a family, and he was satisfied with his sentence.
3. The application was opposed. Miss Matere, representing the respondent, submitted as follows: the applicant was sentenced to three (3) years' imprisonment. The applicant pleaded guilty, and the trial magistrate, who had the opportunity to observe him declined to adopt the pre-sentence report. His reason, that he has a family dependent on him, is not sufficient grounds for the court to reduce his sentence. His plea should be dismissed. It was further submitted that the plea was not unequivocal. The applicant was not informed of the seriousness of the charge he was pleading guilty to, and the facts surrounding the offence were not read to him to enable him to plead on an informed basis. The prosecution presented the facts as outlined in the charge sheet. From the mitigation raised, he was



aware of what he pleaded guilty to, for he said he had assaulted his sister in law, and he sought leniency and sought to be forgiven. The applicant was aware of what he was agreeing to. The application is on sentence and he is not opposed to the sentence. The period he has served is a short period, as he was sentenced on the 26.11.2024.

Determination

4. I have considered both the application and the rival submissions. The applicant requests a non-custodial sentence for the remainder of his current period of detention. Although the respondent objects to the application, they have noted that the plea was not unequivocal. As I consider the applicant's application, I have examined the trial court's record to understand how the plea was entered. Section 207(1)(2)(3) of the *Criminal Procedure Code* provides guidelines on how a plea should be taken; it states as follows.

- (1) The substance of the charge shall be stated to the appellant 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 appellant 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.
- (3) If the appellant person does not admit the truth of the charge, the court shall proceed to hear the case as hereinafter provided.

6. The legal procedure to be followed by a court when taking a plea in a criminal trial was established in *Adan v Republic* (1973) EA 445, where the Court of Appeal for East Africa examined how pleas of guilty should be recorded and the steps to be taken. It set out the following guidelines:

- i. The charge and all the essential ingredients of the offence should be explained to the accused in his language or in a language which 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 the facts or raises any question of his guilt his reply must be recorded and change of plea entered; and
 - 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.
5. Applying the above, in this case, the court record indicates that the charge was read to the accused in a language he understands, and thereafter, he admitted the charge, stating;

“ Ni Kweli”.

A plea of guilty was entered and thereafter and under facts the record indicates;



Court Prosecutor: Facts are as per particulars of the charge sheet. I produce.

- a. P3 Form dated 08/07/2024 as Pexhibit No.1
- b. Treatment notes dated 08/07/2021 as Pexhibit 2.

That is all

Accused : Ni Kweli

Court: Facts are true

Court : Accused person Victor Naibei Kimtai is convicted on own plea of guilty as charged C/S 234 of the penal code, Chapter 63 Laws of Kenya.

7. The plea before the trial court was improper because the court failed to follow the provisions of section 207 (1), (2), and (3) of the *Criminal Procedure Code*. The trial court did not warn the applicant of the consequences of his guilty plea, nor were any facts read out to him. The prosecution has a duty to state the facts in summary. Although this issue was not raised by the applicant, I find that no proper plea was taken, and therefore, the plea is invalid and subject to review by this court. I therefore set aside the proceedings, conviction, and sentence in Criminal Case No. 572 of 2024, Principal Magistrate's Court at Sirisia. The applicant shall appear before the Principal Magistrate's Court at Sirisia on 22nd July 2025 for plea-taking. It is so ordered.

DATED, SIGNED AND DELIVERED AT BUNGOMA ON THIS 17TH DAY OF JULY 2025.

R.E.OUGO

JUDGE

In the presence of:

Victor Naibei Kimtai/ Applicant

Miss Matere - For Respondent / State

Wilkister C/A

