



**Kipkore v Republic (Criminal Appeal E043 of 2024)
[2025] KEHC 9653 (KLR) (4 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 9653 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ITEN
CRIMINAL APPEAL E043 OF 2024
JRA WANANDA, J
JULY 4, 2025**

BETWEEN

EVANS KIPLAGAT KIPKORE APPELLANT

AND

REPUBLIC RESPONDENT

(Appeal from the Judgment and sentence dated 14/08/2024 delivered in Iten Senior Principal Magistrate’s Court Criminal Case No. E072 of 2024 by Hon. V. Karanja-PM)

JUDGMENT

1. There seems to be several files all being Appeals filed by the same Appellant herein against the same trial Court Judgment referred to above. As it were, the Judiciary has for some time now been grappling with this now prevalent habit of inmates filing multiple post-trial Court proceedings, whether Appeals, Revisions or Petitions, all challenging one and same decision, sometimes in different Courts and/or territories. This seems to be one such case. While this sometimes happens out of innocent ignorance of the applicable procedures, in some instances, it is a deliberate outright act of “forum shopping”.
2. Although in this instance, I am only dealing with Iten High Court Criminal Appeal No. 043 of 2024, the Court Registry has also “fished out” and supplied me with the files in Iten High Court Criminal Appeal No. E035 of 2024 and also Iten High Court Criminal Appeal No. E045 of 2024, all filed by the same Appellant herein and challenging the same trial Court decision. For this reason, the determination herein shall also apply to these other two Appeals.
3. Back to the matter at hand, the Appellant was charged with the offence of conspiracy to defeat justice and interference with witnesses, contrary to Section 117 of the Penal code. The particulars were that on the 8/08/2024 at Iten Law Courts, Kapchemutwa Location in Elgeyo North Sub-County within Elgeyo Marakwet County, while posing before Court as the complainant’s father and the accused’s father respectively, he wilfully and unlawfully conspired with the accused person charged for the



- offence of defilement before the Court to deny the complainant justice by telling the Court of law to acquit the accused since they have settled the defilement case out the Court.
4. The record indicates that the Appellant took plea on 14/08/2024 and that he pleaded guilty to the charge and was on the same date convicted on his own plea of guilty, and sentenced to serve 5 years imprisonment.
 5. Aggrieved by the decision, the Appellant filed this Appeal on 19/09/2024. The Petition of Appeal filed is however not helpful as it does not bring out any known ground of Appeal. There is however a substantive one filed through Messrs J.K. Kiplagat & Co. Advocates, in the file in Iten High Court Criminal Appeal No. E035 of 2024, which I will therefore treat as encompassing the composite grounds preferred for all the said 3 Appeals. The Petition contains 6 grounds as follows:
 - i. That the learned trial Magistrate erred in law and in fact in entirely relying on a defective charge sheet.
 - ii. That the learned trial Magistrate erred in law and in fact in entering plea of guilty against the Appellant without considering the language clearly understood by the Appellant.
 - iii. That the learned trial Magistrate erred in law and in fact in arriving at an erroneous judgment not supported by law.
 - iv. That the learned trial Magistrate erred in law and in fact in harshly and excessively convicting and sentencing the Appellant.
 6. The Appeal was then canvassed by way written submissions. The Appellant, although seemingly represented by the Advocates referred to above, filed, in person, undated handwritten Submissions. On the part of the Respondent, Prosecution Counsel Racheal Mwangi filed the Submissions dated 25/02/2025.

Appellant's Submissions

7. The Appellant, in his Submissions, basically submitted that the charges were not read out to him, and that the Court failed to note that what he sought was reconciliation and not any attempt at interfering with witnesses in breach of the provisions of Section 176 of the [Criminal Procedure Code](#). He basically submitted that all he tried to do was to convince the parties to forgive each other. He also claimed that he was not shown the charge sheet and he was not given the opportunity to mitigate. He then claimed that he only sought to reconcile the parties because he was aware that the charge of attempted defilement brought against the accused person in the case was a frame-up and based on false allegations.

Respondent's Submissions

8. Ms. Mwangi, in her Submissions, readily conceded to the Appeal, agreeing that, indeed, the plea of guilty was equivocal. She cited Section 207(2) of the [Criminal Procedure Code](#), and submitted that although the Appellant pleaded guilty, the prosecution did not read out the facts of the offence to the Appellant as required by law, and that the Prosecutor only stated that the facts were "as per charge sheet". She cited the case of Benard Saidimu & 4 Others V Republic [2019] eKLR. She submitted that the plea was therefore equivocal, did not meet the legal threshold and thus, the trial was illegal and defective. She urged that in the circumstances, it in the interest of justice that this Court orders for a retrial. She cited the case of Makupe v Republic [1989] eKLR and urged further that the Appellant is not likely to suffer injustice if a retrial be ordered.



Determination

9. As a first appellate Court, I am obligated to revisit and re-evaluate the matter afresh, assess the same and make my own conclusions (see *Okeno vs Republic* (1972) E.A 32).
10. Although one of the grounds raised in the Petition is that the trial Magistrate erred in entirely relying on a defective charge sheet, I note this ground has not been urged further by the Appellant in his Submissions. I therefore presume that it has been abandoned.
11. From what I can decipher from the Appellant's Submissions, the matters he has touched on give rise to the following remaining issues for determination:
 - i. Whether the trial Court properly convicted the Appellant on his own plea of guilty for the offence of conspiracy to defeat justice and interference with witnesses.
 - ii. Whether the sentenced of 5 years imprisonment was justified.
12. Under the provisions of Section 348 of the *Criminal Procedure Code*, no appeal is allowed in the case of an accused person who has been convicted on his own plea of guilty, except as to the extent or legality of the sentence. This position was reiterated in the case of *Olel v Republic* (1989) KLR 444. For this reason, the ground listed in the Petition alleging that the trial Magistrate erred in arriving at an erroneous judgment not supported by law, cannot therefore be sustained.
13. Apart from "... the extent and legality of the sentence", the other situation where the High Court may entertain an Appeal pursuant to a conviction based on a plea of guilty, is where the plea taking process was itself flawed. This was reiterated by the Court of Appeal in the case of *Alexander Lukoye Malika v Republic* [2015] eKLR, in which the following was stated:

"A court may only interfere with a situation where an accused person has pleaded guilty to a charge where the plea is imperfect, ambiguous or unfurnished such that the trial court erred in treating it as a plea of guilty. Another situation is where an accused person pleaded guilty as a result of a mistake or misapprehension of the facts. An appellate court may also interfere where the charge laid against an accused person to which he has pleaded guilty disclosed no offence known in law. Also where upon admitted facts, the appellant could not in law have been convicted of the offence charged."
14. The correct manner of plea taking process was set out in the leading case of *Adan v Republic* (1973) EA 445 at 446 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 then admits all those essential elements, the magistrate should record what the accused has said, as nearly as possible in his own words, and then formally enter a plea of guilty. The magistrate should next 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, off course, be recorded.”

15. It is therefore clear that the charge, the particulars and the facts must be read to the accused in his language, or in a language he understands. His response must also be recorded, preferably in the exact verbatim words he has used to respond, and even more preferably, include them in the language they have been used. An interpretation can then be made in the English or Kiswahili language, as the case may be.
16. If the accused person pleads guilty, the Court, after entering the plea of guilty, must then ensure that the statement of facts of the offence is read out to the accused in its entirety, and he is then again asked whether the facts, as read out, are correct. Only if he again confirms that the facts are correct, should the Court proceed to convict. As stated in the case of Adani (supra), “the statement of facts and the accused's reply must, off course, be recorded”.
17. As correctly observed by Prosecution Counsel Ms. Mwangi, after the Appellant pleaded guilty, there is no indication from the record that the Prosecutor read out to him the facts of the offence. All she is recorded to have done is to only proclaim to the Court that the facts were “as per charge sheet”.
18. In the Adan case, supra, the Court further stated as follows:

“The statement of facts serves two 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 infrequently happens that an accused, 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 importance of ensuring of the efficacy of a conviction founded on a plea off guilty was reiterated in the Court of Appeal case of Elijah Njihia Wakianda vs. Republic [2016] eKLR in the following terms:

“Given all the safeguards available to an accused person through the process of trial, the entry of a plea of guilty presents a rare absolute capitulation; a throwing in of the towel and a giving of a walkover to the prosecution and often at great cost. A conviction comes with its consequences of varying gravity. Thus it is that the courts, at any rate appellate courts, would not accept a plea of guilty unless satisfied that the same has been entered consciously, freely and in clear and unambiguous terms.”
20. In the circumstances, I find that the failure to read out the facts of the offence to the accused before he was convicted, means that this Court is unable to satisfy itself that the Appellant understood what he was pleading guilty to. It cannot therefore be established that the plea was unequivocal. This benefit of doubt must, as required in criminal law, tilt in favour of the Appellant.
21. Prosecution Counsel Ms. Mwangi therefore correctly conceded to this Appeal. I therefore find that the process of plea-taking conducted at the trial Court was flawed and the conviction of the Appellant on the basis of his own plea of guilty cannot therefore stand.
22. Having found as above, the issue of the legality or extent of the sentence of 5 years imprisonment becomes academic and I will not therefore belabour it.



23. What then is the course that this Court should now take? Should it release the Appellant? Ms. Mwangi has proposed that the case be remitted back to the trial Court for retrial.
24. In respect to the option of a retrial, the Court of Appeal, in the case of *Ekimat V. Republic* (2005) 1 KLR 182 guided as follows:
- “..... Where a conviction is vitiated by a gap in the evidence or other defect for which the prosecution is to blame, the court will not order a retrial. But where a conviction is vitiated by a mistake of the trial court for which the prosecution is not to blame it does not follow that a retrial should be ordered; that a retrial should not be ordered unless the court is of the opinion that on the consideration of the admissible or potentially admissible evidence a conviction might result. Each case must depend on its particular facts and circumstances but an order for the retrial should only be made where the interest of justice require it and should not be made where it is likely to cause an injustice to an accused person.”
25. From the foregoing, it is evident that generally, a retrial will only be ordered where the interest of justice so requires, and only where no prejudice will be occasioned to the accused. This principle was restated in the case of *Fatehali Manji vs Republic* [1966] EA 343 in which the Court of Appeal stated as follows:
- “In general a retrial will be ordered only when the original trial was illegal or defective; it will not be ordered when the conviction is set aside because of insufficiency of evidence or for the purpose of enabling the prosecution to fill up gaps in its evidence at the first trial; even where a conviction is vitiated by a mistake of the trial court for which the prosecution is not to blame, it does not necessarily follow that a retrial should be ordered; each case must depend on its own facts and circumstances and an order for a retrial should only be made where the interests of justice require it.”
26. Similarly, in the case of *Mwangi –versus- Republic* [1983] KLR 522, the Court of Appeal stated that:
- “We are aware that a retrial should not be ordered unless the appellate court is of the opinion, that on a proper consideration of the admissible, or potentially admissible evidence, a conviction might result. In our view, there was evidence on record which might support the conviction of the appellant.”
27. Further, in the case of *Pius Olima & another v Republic* [1993] eKLR, the Court of Appeal again stated as follows:
- “Our attention was drawn to authorities that deal with the principles that should be applied when considering whether a retrial should be ordered or not. The principles that emerge are that a retrial may be ordered where the original trial, as was found by the High Court and with which we agree, is defective, if the interests of justice so require and if no prejudice is caused to the accused. Whether an order for retrial should be made ultimately depends on the particular facts and circumstances of each case.”
28. Applying the above principles to the facts of this case, I consider is that the offence that the Appellant is alleged to have committed - conspiracy to defeat justice and interfering with witnesses - is a serious offence relating to the administration of justice. I also consider that the charge that the Appellant is alleged to have conspired to defeat was for an offence of defilement of a girl below the age of 18 years of age. It is the kind of case that should, in the interest of justice, proceed to its logical conclusion and be determined on merits.



- 29. The offence is stated to have been committed in August 2024, thus less than 1 year ago. It is not therefore a situation that can be said to be one that, due to lapse of time, witnesses are no longer available or if they are, that their memories have become blurred, or that the evidence can no longer be procured. It has also not been alleged that ordering for a retrial is so hopeless or an effort on futility because of lack of evidence.
- 30. Balancing the interests of the Appellant and that of the public, I believe that the interest of justice will be served by ordering for a retrial. I do not discern any irreparable prejudice that will be occasioned to the Appellant if such retrial is ordered. The mistake that occurred being only as regards the conduct of the plea-taking, I do not think that a retrial would amount to giving the Prosecution a “second bite at the cherry” by enabling it to restructure or fill gaps in the case.

Final Order

- 31. In the end, I order as follows:
 - i. This Appeal is allowed and the conviction of the Appellant in Iten Senior Principal Magistrate’s Court Criminal Case No. E072 of 2024 is hereby quashed and the sentence set aside.
 - ii. The case is remitted back to the trial Court for retrial.
 - iii. To avoid the perception of an already “clouded judicial mind”, I direct that the Appellant shall be retried before a Magistrate of competent jurisdiction, other than Hon. V. Karanja (PM).
 - iv. The Appellant shall be escorted to the relevant Police Station for purposes of preparing a fresh charge sheet and he should then be presented before the relevant Magistrate’s Court at the Iten Law Courts not later than Friday, 11/07/2025, for purposes of taking a fresh plea.
 - v. Since the matters raised in this Appeal are the same as those raised in Iten High Court Criminal Appeal No. E035 of 2024 and Iten High Court Criminal Appeal No. E045 of 2024, also filed by the same Appellant and arising from the same trial Court decision, the determination herein applies mutatis mutandis to the said other two Appeals, and those said other files are also now marked as closed.

DELIVERED, DATED AND SIGNED AT ELDORET THIS 4TH DAY OF JULY 2025

.....
WANANDA J. R. ANURO
JUDGE

Delivered in the presence of:
The Appellant (present virtually from Tambach Prison)
Ms. Mwangi for the State
C/A: Brian Kimathi

