**Vincent v Republic (Criminal Appeal E027 of 2023)**
**[2025] KEHC 10434 (KLR) (17 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 10434 (KLR)

**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT KAJIADO**

**CRIMINAL APPEAL E027 OF 2023**

**CW MEOLI, J**

**JULY 17, 2025**

**BETWEEN**

**ANGASA VINCENT ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

***(Being an appeal against conviction and sentence in Kajiado CM's Criminal Case number E298 of 2023 before Kinyatta, R.M)***

## JUDGMENT

1. The Appellant, Angasa Vincent, was charged in Kajiado CM's Criminal Case number E298 of 2023 with 2 counts of grievous harm contrary to Section 234 of the *Penal Code*. The particulars in the 1st count were that on 10th February 2023 at Oloosirkon, Isinya sub-county within Kajiado County, he unlawfully did grievous harm to Moses Ledama. The particulars in the 2nd count were that on 10th February, 2023 at Oloosirkon in Isinya sub-county within Kajiado County he unlawfully did grievous harm to Peter Washaiyo.

2. The Appellant who was out on a police cash bail did not attend the court for plea on 13.03.2023, because of which a warrant was issued for his arrest, and the cash bail forfeited. Upon his arrest, the Appellant was arraigned before the court on 18.04.2024. When the charges were read out to him on 18.04.2023, he pleaded guilty and was accordingly convicted. He was sentenced to serve 15 years imprisonment. However, the court did not indicate the count to which the sentence applied, or whether the sentence applied to both offences or to run concurrently.

3. Aggrieved with the outcome, the Appellant filed the Petition of Appeal dated 9.08.2023 raising the following grounds of appeal: -

a. That the Honourable trial court erred both in law and fact by not finding that the Appellant's plea was not unequivocal considering all relevant factors and the circumstances under which the conviction and sentence was made.

b. That the Honourable trial court erred both in law and fact by not considering that the Appellant was misled and duped by the police who had arrested and brought him to court for absconding into entering a plea of guilty allegedly as the complainants were ready and willing to have this matter settled amicably on him admitting the charges.

c. That the Honourable trial court erred both in law and fact by not finding that the plea of guilty entered by the Appellant was made under duress.

d. That the Honourable trial court erred both in law and fact by not interrogating the veracity of the charges by two different male adult complainants who both leveled the charges of assault against him.

e. That the Honourable trial court erred both in law and fact by meting a manifestly harsh and cruel sentence.

**Appellant's Submissions**

4. The Appeal was canvassed through written submissions. Through submissions by his counsel dated 2.05.2025, the Appellant contended that the circumstances in which he pleaded guilty were not ideal or normal given that he was presented to court for plea after his arrest, and claiming to have earlier denied the charges on his first arraignment. He argued that the police duped him into pleading guilty. He asserted that his plea of guilty was equivocal as the court never explained to him the consequences of pleading guilty and he did not have legal representation. Thus, negating the guilty plea. He relied on two decisions by the High Court at Nyamira, namely, HCCRA No E049 of 2023 Josephat Obongo Mogire-vs- Republic and HCCRA E010 of 2024 Samuel Kimani Irungu -vs- Republic.

5. He further attacked the sentence as being harsh and excessive.

**Respondent's submissions.**

6. The Respondents opposed the appeal. First, by contending in their submissions that based on the lower court record, the Appellant did not attend court for plea on 13.03.2023, but when he appeared on 18.04.2023 pleaded guilty to the two counts of grievous harm and was convicted after the facts were read out to him.

7. On the question whether the Appellant's plea of guilty on the two counts of grievous harm was unequivocal, the Respondent's counsel asserted that the plea was taken in a language that the Appellant understood; that the Appellant confirmed the facts read out to him and acknowledged they were correct; and that his claim that the investigation officer misled him to admit to the charge remain mere allegations as they were not supported by evidence.

8. While admitting that the record of proceedings did not indicate the language in which the plea was taken, the Respondent's counsel pointed to the Appellant's response in Kiswahili to the effect "Nakubali", followed by his mitigation. Counsel further highlighted errors in the typed proceedings showing that a plea of not guilty was entered on both counts and the omission of an indication of the language used during the proceedings. Reiterating the correct plea taking process under Section 207(1) and (2) of the *Criminal Procedure Code*, as restated in the case of Adan vs Republic[1973]EA 445, the Respondent cited the case of Oyatsi -vs- Republic (criminal appeal E111 of 2023) where

the court despite finding the plea taking process to be flawed, concluded that taken as a whole in the circumstances of that case, the plea of guilt was not vitiated .

9. Finally stating regarding the sentence that the Appellant was granted an opportunity to address the court in mitigation, which was considered before sentencing. Further pointing out that although Section 234 of the *Penal Code* prescribes a penalty of life imprisonment for the offence of grievous harm, the Appellant was sentenced to serve 15 years which was lawful. Counsel pointed out that the injuries sustained by the complainants were severe as recorded in the respective P3 Forms produced before the plea court.

10. In conclusion the Respondent's counsel asserted that despite being flawed, when considered as a whole, the plea taking process substantially complied with the threshold set out under Section 207 of the *Criminal Procedure Code* (CPC). The court was therefore urged to determine this case on its own facts and unique circumstances, to dismiss the appeal, uphold the conviction and affirm the sentence.

**Analysis and Determination**

11. Two issues were raised in this appeal, namely, whether the Appellant's plea was unequivocal and whether the sentence was harsh and excessive. However, in my considered view, the appeal turns on the first issue. The Appellant was charged with grievous bodily harm contrary to Section 234 of the *Penal Code*, which states that any person who unlawfully does grievous harm to another is guilty of a felony and is liable to imprisonment for life.

12. The record shows that the Appellant was to be arraigned on 13.03.2023 for plea taking. However, the Appellant was not in court on that date and a warrant of arrest was issued against him. He was arrested and presented to the court on 18.04.2023 for plea taking. Comparing the handwritten and typed proceedings, the court noted a discrepancy regarding whether a plea of guilty or not guilty was recorded, and therefore resolved to rely on the handwritten proceedings which reflected the latter.

13. The court having reviewed the original handwritten record of plea taking noted several anomalies. First, the record does not reflect that the charges and elements thereof were read and explained to the Appellant, in the language he understood, nor was the language used during the proceedings stated. The trial court however recorded against each count the Appellant's answer as, "Nimekubali", before indicating that a plea of guilty had been entered. Thereafter the prosecution read out the facts, to which the responded by stating that they were true.

14. Further, there is no indication thereafter that the plea court convicted the Appellant, instead the court proceeded to receive the antecedents of the Appellant from the prosecution and the Appellant's mitigation address before sentencing him. As for the sentence, the record merely reflects a sentence of 15 years imprisonment with no indication whether the sentence applied to both offences or whether they were to run concurrently.

15. The key question before the court is whether these apparent omissions amount to defects that render the plea of guilt unequivocal and ultimately vitiate the entire process.

16. Section 207 of the *Criminal Procedure Code* provides as follows: -

> "(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 plea agreement;
>
> (2) If the accused person admits the truth of the charge otherwise than by 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."

17. As stated in the case of Republic –Vs- Adan [1973] EA 445, a trial court taking plea must satisfy itself that the accused understands the charge facing him and that the plea of admission of guilt offered by the accused is unequivocal. That requirement cannot be said to be satisfied where the language used to read out the charges is not indicated in the proceedings. The Appellant faced two counts of an offence that carries a penalty of possible life imprisonment, hence the need for the plea court to exercise great care in satisfying itself that indeed the Appellant understood the charge and his plea of guilty was unequivocal.

18. Although the language used to read the charges to the Appellant was not indicated in the proceedings, nor is it recorded that the charges were read out, beyond the reference to the two counts, against which were words attributed to the Appellant, in Kiswahili, namely, 'Nakubali'. In the absence of an indication of the language in which the charges were read out to the Appellant, this court cannot presume that the language that was used to read the charges was also Kiswahili.

19. In Elijah Njihia Wakianda –vs- Republic [2016] eKLR the Court of Appeal had this to say about the plea court's failure to indicate the language used during plea:

> " We think that it is good practice for the specific language used to state the elements of the charge be specifically stated. That should be established by specifically asking the accused what language he understands, and recording his answer before either using the language he mentions or ensuring a translator is present to convey the proceedings to him in the chosen language....."

20. Based on all the foregoing, it is apparent that the plea taking procedure adopted in the lower court did not comply with Section 207 of the *Criminal Procedure Code* or the guidelines spelt out in the case of Adan -Republic [1973] EA 445 to the following effect:-

> " (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 in 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 guilty 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."

21. Section 348 of the *Criminal Procedure Code* provides that 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. The lower court in this case did not record a conviction before proceeding to sentence the Appellant, therefore treating him as one who had been convicted.

22. The Court of Appeal in the case of Alexander Lukoye Malika v Republic [2015] eKLR held that :

> " 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 unfinished 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 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 to law. Also, where upon admitted facts the appellant could not in law have been convicted of the offence charged."

23. The Respondent has urged the court to find that the defects in this case did not vitiate the process. Reviewing the entire process against the law and relevant authority, this court is of a different view. The process is vitiated by the major defects outlined in this judgment, and this court feels justified to interfere. Hence, the conviction (unstated in this case) and sentence against the Appellant cannot stand. The appeal is allowed, and consequently, the conviction is quashed, and the sentence of 15 years imprisonment is set aside.

24. Next, the court has given due consideration to the question whether or not to order a retrial in this case. The Court of Appeal in the case of Ahmed Sumar vs. R (1964) EALR 483 stated the following: -

> " ...in general a retrial will be ordered only when the original trial was illegal or defective; it will not be ordered where the conviction is set aside because of insufficiency of evidence or for the purposes 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;....."

18. Similarly, in Samuel Wahini Ngugi vs. R [2012] eKLR the Court of Appeal held that: -

> " The law as regards what the Court should consider on whether or not to order retrial is now well settled. In the case of Ahmed Sumar vs. R (1964) EALR 483, the predecessor to this Court stated as concerns the issue of retrial in criminal cases as follows:
>
> > 'It is true that 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 in our view follow that a retrial should be ordered...In this judgment the court accepted that a retrial should not be ordered unless the Court was of the opinion that on consideration of the admissible or potentially admissible evidence a conviction might result. Each case must depend on the particular facts and circumstances of that case but an order for the retrial should only be made where the interests of justice required it and should not be ordered when it is likely to cause an injustice to an accused person'
> >
> > That decision was echoed in the case of Lolimo Ekimat vs. R, Criminal Appeal No. 151 of 2004(unreported) when this Court stated as follows:
> >
> > > '...the principle that has been accepted to courts is that each case must depend on the particular facts and circumstances of that each case but

an order for the retrial should only be made where interests of justice require it.'"

19. Further, in Muiruri –vs- Republic (2003), KLR, 552 and Mwangi –Vs- Republic (1983) KLR 522 and Fatehali Maji –vs- Republic (1966) EA, 343 the Court expressed the view that: -

> " Although some factors may be considered, such as illegalities or defects in the original trial, the length of time elapsed since the arrest and arraignment of the appellant; whether mistakes leading to the quashing of the conviction were entirely the prosecution's making or not; whether on a proper consideration of the admissible or potentially admissible evidence a conviction might result from a retrial; at the end of the day, each case must depend on its own particular facts and circumstances and an order for a retrial should only be made where the interests of justice requires it."

25. Considering some of the pronouncements above, the Court of Appeal reiterated in Pius Olima & another –vs- Republic [1993] eKLR that:

> " 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. These are:- Ahmed Sumar – Vs- Republic [1964] EA 481; Manji –Vs-Republic [1966] EA 343; Mujimba –Vs- Uganda, [1969] and Merali & Others –Vs- Republic, [1971] 221. The principles that emerge are that a retrial may be ordered where the original trial as was found by the High Court.....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."

26. In this case the procedure adopted by the lower court in taking the Appellant's plea to the charges was defective and has resulted in the vitiation of the conviction. The prosecution was not to blame, and even though the Appellant has served almost two years of his sentence, any likely prejudice ought to be balanced against the fact that the charges facing him were of a grave nature, and the requirements of interests of justice. All in all, the court is persuaded that this is a proper case to order a retrial.

27. In the circumstances, I would direct that the Appellant be produced before the Chief Magistrate's Court at Kajiado on 22nd July 2025 for purposes of pleading afresh to the charges. This decision is to be placed in the lower court file which shall be immediately transmitted to the lower court for the purposes stated in the final part of this judgment.

**DELIVERED AND SIGNED ELECTRONICALLY AT KAJIADO ON THIS 17TH DAY OF JULY 2025.**

**C.MEOLI**

**JUDGE**

In the presence of:

Applicant: Present

For the Respondent: Mr. Kilunda

C/A: Lepatei