



REPUBLIC OF KENYA



**KENYA LAW**  
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**Omollo v Republic (Criminal Appeal E031 of 2023)  
[2024] KEHC 2664 (KLR) (14 March 2024) (Judgment)**

Neutral citation: [2024] KEHC 2664 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KITALE  
CRIMINAL APPEAL E031 OF 2023  
AC MRIMA, J  
MARCH 14, 2024**

**BETWEEN**

**DANSTAN OMOLLO ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**JUDGMENT**

1. Danstan Omollo, the Appellant herein, was charged with the offence of breaking into a building and committing a felony. The particulars of the offence were as follows: -

On the night of 22<sup>nd</sup> March, 2023 and 23<sup>rd</sup> March, 2023 at unknown time at Kwanza market, Kwanza Location in Kwanza Sub County within Trans-nzoia County, jointly with others not before court broke and entered a building namely a boutique shop and stole from therein assorted dresses, shoes, shirts, vests, belts for ladies and men, jackets, inner pants and skirts all valued at Kshs.320,000/- the property of Martha Makokha.

2. The Appellant also faced an alternative charge of handling stolen property.
3. He admitted the main charge and a guilty plea was recorded. The Court then received comprehensive mitigations and the Appellant again agreed to the same.
4. The Court, however, did not enter any conviction, but proceeded to receive mitigations and then sentenced the Appellant to 5 years in prison.
5. A look at the Warrant of Committal to Prison indicates that the Appellant was convicted of the offence of breaking into a building and committing a felony.
6. The process of plea taking is one that must be guarded jealously with strict adherence to procedure lest an accused person loses their liberty summarily.



7. 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."

8. This Court also appreciates, and as was observed by the Court of Appeal in Ndede vs Republic [1991] KLR 567 that the bar to an appeal against a conviction is not absolute. There are circumstances that make a Court depart from the finding of the Trial Court's conviction based on guilty plea. The learned Judges observed as follows;

This court held that the court is not be bound to accept the accused persons admission of truth of the charge of conviction as there may be an unusual circumstance such as injury to the accused, or the accused is confused or there has been inordinate delay in bringing the accused person to court from the date of arrest. In the appeal before us, we reiterate our satisfaction that the plea of guilty was unequivocal.

9. I have carefully gone through the record. Since the Appellant was not convicted of any offence, then the sentence he is serving is illegal. The appeal must succeed.

10. This Court is satisfied that this is a case fit for plea re-taking.

11. On the basis of the above, the following final orders do hereby issue: -

- a. The appeal is allowed and the sentence of 5 years' imprisonment is hereby set-aside.
- b. The Appellant shall be taken for a fresh plea-taking.

It is so ordered.

**DELIVERED, DATED AND SIGNED AT KITALE THIS 14<sup>TH</sup> DAY OF MARCH, 2024.**

**A. C. MRIMA**



## **JUDGE**

Judgment delivered virtually and in the presence of: -

Danstan Omollo, the Appellant in Person.

Miss Kiptoo, Learned Prosecution Counsel instructed by the Office of the Director of Public Prosecutions for the Respondent.

Chemosop/Duke – Court Assistants.

