



REPUBLIC OF KENYA



**Bett v Republic (Criminal Appeal E136 of 2022)
[2024] KEHC 8411 (KLR) (Crim) (11 July 2024) (Judgment)**

Neutral citation: [2024] KEHC 8411 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
CRIMINAL APPEAL E136 OF 2022
K KIMONDO, J
JULY 11, 2024**

BETWEEN

CORNELIUS KIPLETING RUTTO BETT APPELLANT

AND

REPUBLIC RESPONDENT

*(Appeal from the decision by M. Thibaru, Resident Magistrate in
Makadara Criminal Case No. 1640 of 2022 dated 12th April 2022)*

JUDGMENT

1. The appellant pleaded guilty to two counts of personation contrary to section 382 of the [Penal Code](#) and also to a further charge of stealing contrary to section 275 of the Code.
2. The particulars of personation in Count I were that on 27th February 2022 at Umoja stage along Tom Mboya Street in Nairobi City within Nairobi County, with intent to defraud, he falsely presented himself to Faith Ndinda Mwendu to be a police officer of the rank of Chief Inspector attached to the Central Police Station and purported to arrest her.
3. In Count III, he was charged that on the same date and place, he stole from her a mobile phone make Samsung valued at Kshs 30,000.
4. The particulars of personation in Count II were that on the same date at Liddos Lounge along Keekorok Road in Nairobi, he falsely presented himself to George Kiiru to be a police officer of the rank of Chief Inspector attached to the Central Police Station
5. The petition of appeal was filed out of time pursuant to leave granted by the High Court on 20th June 2022. It raises eight grounds but which can be compressed into four. Firstly, that the learned trial magistrate erred by sentencing him immediately after the plea; secondly, that no mental assessment was



- undertaken prior to the plea; thirdly, that he was not granted a fair trial or an opportunity to mitigate; and, fourthly, that the sentence handed down was draconian.
6. I should add that some of the grounds are misleading because they suggest that there was a trial in which he was denied access to witness statements or in which there would have been an inquiry or a defence relating to “tools belonging to a police officer who was arrested and subsequently released on mysterious grounds”.
 7. But I understood the appellant to say that his plea of guilt was equivocal. At the hearing of the appeal, he relied entirely on the written submissions filed on 17th July 2023.
 8. The appeal is contested by the State. Learned Prosecution Counsel, Mr. Mongare, argued that the plea was unequivocal and that the sentence handed down was well within the law. He implored the court to dismiss the entire appeal.
 9. This is a first appeal to the High Court. I have examined the record; re-evaluated the facts and drawn independent conclusions. *Njoroge v Republic* [1987] KLR 19, *Okeno v Republic* [1972] E. A. 32, *Felix Kanda v Republic, Eldoret, High Court Criminal Appeal 177 of 2011* [2013] eKLR.
 10. The three counts in the amended charge sheet were read and explained in Kiswahili to the appellant who replied: *Ni kweli* [It is true]. When the facts were subsequently presented, he accepted they were correct. He then offered mitigation stating that he is an orphan and that his son was about to enroll in high school.
 11. Upon analysis of the proceedings in the lower court of 12th April 2022, I readily find that he fully understood the charges and freely admitted them. There is no requirement in the Criminal Procedure Code for a psychiatric test prior to the type of charge or plea in this case. Considering the nature of the offence and the unequivocal plea, the lower court was entitled to proceed with sentencing immediately. Having also admitted the facts, the issue of witness statements or the “tools belonging to another suspect who vanished mysteriously” was all water under the bridge.
 12. In the end, I find that the plea was unequivocal. See generally *Adan v Republic* [1973] EA 445. The appeal against conviction is accordingly dismissed. It bears repeating that from the facts presented and admitted, all the ingredients of the offences were proved and there is no plausible defence. The appeal against conviction is accordingly dismissed.
 13. I will now turn to the sentence. Section 354 (3) of *Criminal Procedure Code* empowers this court to review the sentence. Like I stated earlier, the appellant tendered full mitigation. It is thus not true that he was not afforded such opportunity. The lower court also took into consideration that he was a first offender. In all the circumstances of this case I cannot say that he was denied a fair trial.
 14. The appellant was sentenced to 1 year each on the two counts of personation; the same to run concurrently. On Count II for theft, he was sentenced to 1 year imprisonment which was to run consecutively to the other sentence. The offences were separate and against two complainants. Considering the gravity of the offences, the punishment meted out is reasonable and well within the law. I decline to disturb any part of the sentence.
 15. The upshot is that the entire appeal lacks merit and is hereby dismissed.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 11TH JULY 2024.

KANYI KIMONDO



JUDGE

Judgment read virtually on Microsoft Teams in the presence of-

The appellant.

Ms. Wafula for the Republic instructed by the Office of the Director of Public Prosecutions.

Mr. E. Ombuna, Court Assistant.

