



**Maganya v Republic (Criminal Appeal 173 of 2023)
[2024] KEHC 15218 (KLR) (3 December 2024) (Judgment)**

Neutral citation: [2024] KEHC 15218 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL APPEAL 173 OF 2023
DR KAVEDZA, J
DECEMBER 3, 2024**

BETWEEN

JACKLINE OBUTU MAGANYA APPELLANT

AND

REPUBLIC RESPONDENT

(Being an appeal against the original conviction and sentence delivered on 27th October 2023 at JKIA Law Court Criminal No. E115 of 2023 Republic vs Jackline Obutu Maganya)

JUDGMENT

1. The appellant was charged and convicted, on her own guilty plea, on three counts: forgery contrary to Section 345 as read with Section 349 of the *Penal Code*; making a document without authority contrary to Section 357(a) of the *Penal Code*; and handling stolen goods contrary to Section 322(2) of the *Penal Code*. She was sentenced to 18 months, 5 years, and 3 years imprisonment respectively for these offences. The sentences are running concurrently.
2. Being aggrieved, the appellant has filed an appeal challenging her conviction and sentence. The grounds raised are that the guilty plea was not unequivocal. The learned trial magistrate erred in law and fact in failing to explain to the appellant her right to have an advocate. The trial court failed to explain the charges and elements of the offences in a language she understands. The trial court failed to explain to the accused, the penalty/veracity of the offence before recording a plea for the appellant.
3. The appeal was canvassed by way of written submissions which have been duly considered.
4. In *Adan v Republic* [1973] EA 445, the Court of Appeal laid down in the simplest and plainest terms the manner in which pleas of guilty should be recorded and the steps that should be followed. It is appropriate to set out the holding in full —

“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 the facts relevant to sentence together with the accused's reply should be recorded."
5. The record of the proceedings shows that the appellant pleaded guilty to the charge and after the facts were read out she replied: "true" to Count 1, Count 3 and the Alternative Charge of Count 4. The trial court then recorded that "plea of guilty entered". The record then shows that the accused made a statement in mitigation and stated "I ask the court to forgive me. I have twins. I regret what I did."
6. The appellant voluntarily entered a plea of guilty. It is noted that the facts of the case were read to her the following day. The trial magistrate, in the proceedings, recorded the following statement: "I, No. 237692 PC Hajji Shora, do swear that the Swahili interpretation I shall give will be the truth, the whole truth, and nothing but the truth." Given this, the appellant's claim that the court conducted proceedings in English is unfounded. The court exercised due diligence, and there is no evidence of any fault in how the proceedings were conducted. The appellant's right to an interpreter was not violated.
7. Regarding the appellant's right to legal representation, it is important to note that the charges against her do not fall under the category of capital offences, for which legal representation is mandatory. In such cases, where an accused person cannot afford legal counsel, the court is obligated to provide one at the state's expense. The offences the appellant faced do not qualify as capital or particularly serious offences that would necessitate state-funded legal representation.
8. In my view, a serious offence involves crimes such as terrorism, drug trafficking, wildlife trafficking, or cybercrimes. These types of offences typically require expert witnesses to present complex evidence. Serious offences might also involve multiple witnesses or charges, making it difficult for an accused person to fully follow the proceedings without legal assistance.
9. The charges against the appellant arose from a single transaction, and she was properly informed of the charges. She pleaded guilty after the court adjourned to secure a Swahili interpreter. When the charges were read to her with the aid of an interpreter, she confirmed that the facts presented were correct.
10. The court record also indicates that during mitigation, the appellant became emotional and broke down. Instead of retracting her plea and opting to plead not guilty, she asked the court for forgiveness. Further, the probation report reveals that the appellant has another pending matter at the *Milimani Law Court, Criminal Case No. 1851/2019*, suggesting that this was not her first encounter with the criminal justice system.
11. I find that the trial court followed proper procedures as outlined in *Adan v Republic(supra)* The appellant's guilty plea was valid, and the conviction was correctly entered. By pleading guilty, the



appellant saved the court time in conducting a trial and preparing a judgment. While she was entitled to some leniency as an incentive, I find the sentence imposed to be excessive under the circumstances.

12. For the foregoing reasons, I hereby order as follows:

- i. In count I, the sentence of eighteen (18) months imprisonment is maintained.
- ii. In count III, the sentence of five years imprisonment is substituted with a sentence of eighteen (18) months imprisonment.
- iii. In the alternative to count IV, the sentence of three (3) years imprisonment is substituted with a sentence of eighteen (18) months imprisonment.
- iv. The sentences shall run concurrently from the date of conviction.

Orders accordingly.

JUDGEMENT DATED AND DELIVERED VIRTUALLY THIS 3RD DAY OF DECEMBER 2024

D. KAVEDZA

JUDGE

In the presence of:

Moenga for the Appellant

Mburugu for the Respondent

Achode Court Assistant

