



REPUBLIC OF KENYA



**Omar v Republic (Criminal Appeal E021 of 2024)
[2024] KEHC 17089 (KLR) (Crim) (17 December 2024) (Judgment)**

Neutral citation: [2024] KEHC 17089 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
CRIMINAL APPEAL E021 OF 2024
AB MWAMUYE, J
DECEMBER 17, 2024**

BETWEEN

OSMAN ABDI OMAR APPELLANT

AND

REPUBLIC RESPONDENT

(Being an appeal by Osman Abdi Omar from the conviction and sentence of the Honourable Wandia Nyamu (SRM) delivered at Nairobi on the 26th February 2024 in Nairobi Criminal Case Number 2048 of 2020)

JUDGMENT

1. This is an appeal by the accused, Osman Abdi Omar, from a conviction and sentence entered by Hon. Wandia Nyamu (SRM) in Nairobi Criminal Case No. 2048 of 2020 on 26 February 2024. The Appellant pleaded guilty to a charge under Section 74(1)(a) of the *Petroleum Act*, 2019 (as read with Section 74(3)(a)), which requires a valid licence from the Energy and Petroleum Regulatory Authority (EPRA) before operating certain petroleum facilities. On his plea, he was convicted of operating a liquefied petroleum gas facility without the required licence. The trial court sentenced him to three years' imprisonment or a fine of Ksh.10,000,000. The appellant now appeals against both the conviction and the sentence.
2. The charge against the Appellant alleged that he was operating an LPG (Liquefied Petroleum Gas) station without a licence from EPRA, contrary to Section 74(1)(a) of the *Petroleum Act*, 2019. Section 74(1)(a) expressly requires a person to have a valid EPRA licence to undertake certain petroleum activities, including bulk storage or handling of petroleum products. The punishment for contravening this provision is laid down in Section 74(3)(a): on conviction, a person is liable to a fine of not less than Ksh.10,000,000 or imprisonment for a term of not less than three years, or both.



3. At the trial on 26 February 2024, the Appellant pleaded “guilty” to the charge. In accordance with Section 207 of the *Criminal Procedure Code*, Cap. 75, the court stated the substance of the charge to the Appellant and asked for his plea. The Appellant replied that the charge was true. The Prosecution then outlined the facts of the offence; the Appellant confirmed that the stated facts were correct. Thereafter, having complied with the statutory procedure for taking a plea of guilty, the court convicted the appellant on that plea. In mitigation, the Appellant admitted his conduct but offered no justification. The court proceeded to sentence him. Relying on Section 74(3)(a) of the Act, the court imposed the minimum sentence of three years’ imprisonment (with an alternative fine of Ksh.10,000,000).
4. The Appellant appealed. In his grounds of appeal, he contends that his plea of guilty was not valid and that the sentence is excessive. He seeks to have the conviction and sentence quashed or varied.
5. The issues can be framed as follows:
 - a. Whether the conviction based on the plea of guilty is permissible or should be set aside, including whether the plea was unequivocal and lawfully taken.
 - b. Whether, assuming the conviction stands, the sentence imposed was lawful and appropriate, or whether it is manifestly excessive.

Analysis

6. This Court’s task is to determine if any error was made in convicting the appellant on his plea or in imposing sentence.
7. Under Section 207 of the *Criminal Procedure Code*, the court must explicitly put the substance of the charge to the accused and record his plea. If the accused admits the charge, his admission must be recorded in his own words and the court may convict and sentence him. The procedure is further elaborated in case law. In *Adan v Republic* [1973] EA 445, the East African Court of Appeal emphasized that after a plea of guilty the prosecution must state the facts and the accused must be given an opportunity to respond or explain before conviction is entered. The High Court in *Ng’ang’a v Republic* [1986] eKLR similarly held that courts must ensure an accused person fully understands the charge and that the plea is unequivocal, especially where the accused is unrepresented. These safeguards are to avoid convictions on pleas that are ambiguous or taken in ignorance of material facts.
8. Here, the record shows that the trial court read out the charge and asked the Appellant to plead; the Appellant answered clearly that the charge was true. The facts underlying the charge were also stated and the Appellant confirmed them. The plea was unequivocal “the substance of the charge was stated to the accused ... and he replied that the charge was true”. There is no suggestion that he misunderstood the charge or that any material fact was withheld. In these circumstances the plea appears to have been properly taken in accordance with the requirements of the Code and *Adan v Republic*. No irregularity is shown on the face of the record.
9. Significantly, Section 348 of the *Criminal Procedure Code* prohibits an appeal against conviction when the accused has pleaded guilty and been convicted on that plea by a subordinate court, “except as to the extent or legality of the sentence.”. The Court of Appeal in *Alexander Lukoye Malika v Republic* [2015] eKLR confirmed that the only circumstances in which a conviction after a guilty plea may be disturbed are exceptional: for example, if the plea was imperfect, ambiguous or induced by mistake; if the charge disclosed no offence; or if on the admitted facts the accused could not in law be convicted of the charged offence. The appellant here has not identified any such flaw. He was charged with a statutory offence under Section 74 of the *Petroleum Act*, to which he admitted. The provisions of Section 74(1)(a) requiring a licence and Section 74(3)(a) (prescribing penalties) plainly apply to his



conduct. In short, the charge was legally sound, and the Appellant's admission (plea) was clear. There is no basis on which this Court can set aside the conviction on appeal.

10. I also note that where an accused pleads guilty unrepresented, courts must exercise caution to ensure the plea is truly voluntary and informed. In *Simon Gitau Kinene v Republic* [2016] eKLR, Joel Ngugi J. stressed that extra care is needed to explain the elements of the offence and the consequences of a guilty plea to an undefended accused. In this case, however, the record indicates that the Appellant was informed of the substance of the charge and answered without reservation. He was warned of the maximum penalty before plea as required by law and confirmed that the facts were true. There is no claim that he was threatened or misled. Accordingly, this court is satisfied that the plea was unequivocal and valid, and we decline to upset the conviction.
11. The charge against the appellant fully complied with Section 134 of the *Criminal Procedure Code*, which requires a charge to specify the offence and necessary particulars. Although a guilty plea ordinarily waives objections to form, it is still noted that the charge clearly stated the offence of operating an LPG facility without an EPRA licence, with sufficient particulars of time, place and manner. The particulars gave reasonable information as to the nature of the offence. In *Isaac Omambia v Republic* [1995] eKLR the Court of Appeal reiterated that particulars are "an integral part of the charge" and must fully inform the accused of the case to meet. Here the appellant himself admitted the essential facts of the charge, so no prejudice arises from any technical defect. The charge was not fatally defective.
12. The Appellant also challenges his sentence as excessive. We first r the *Penal Code* and the governing statutory provisions set minimum sentences for the offence. Section 74(3)(a) of the *Petroleum Act*, 2019 mandates a minimum imprisonment of three years or a fine of Ksh.10,000,000 for contravention of Section 74(1)(a). The trial court imposed exactly that minimum term of three years (with an option of fine), in line with the law.
13. The Appellate court's power to interfere with sentence is circumscribed by principle. As long established in *Wanjema v Republic* [1971] EA 493, an Appellate court will not lightly alter a sentence unless the trial court made a clear error in principle, took account of an irrelevant consideration, or imposed a manifestly harsh or excessive punishment in all the circumstances. The trial court here acknowledged the statutory minimum and the mitigating factors, and then lawfully imposed the minimum term. There is no indication that any improper factor influenced the sentencing decision. On the contrary, the sentence plainly reflects the mandatory minimum sentence.
14. In *Muthoka v Republic* [2024] KEHC 10435 (KLR), the High Court reiterated the Wanjema test: interference is proper only if the sentence is "harsh and excessive" or wrongly reasoned. The Appellant here has offered no convincing argument that three years is unjust. On the contrary, this was the exact term envisaged by law. It cannot be said to be manifestly excessive. Indeed, the Appellant having pleaded guilty to a serious regulatory offence in fact received the minimum available penalty, which can only be regarded as lenient within the statutory scheme. This court accordingly find no grounds to disturb the sentence.
15. In conclusion, the appeal has no merit. The appellant's plea of guilty was properly taken and there is no legal basis to overturn his conviction. The sentence imposed three years' imprisonment or Ksh.10,000,000 fine was within the statutory range and was not excessive. Accordingly, the conviction and sentence are affirmed. The appeal is dismissed and the file is closed accordingly.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 17TH OF DECEMBER 2024.



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BAHATI MWAMUYE

JUDGE.

