



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MALINDI

CRIMINAL REVISION NO. 165 OF 2020

SHAURI KAHINGI KAINGU.....1ST APPLICANT

KUPATA RANDU NZAI.....2ND APPLICANT

-VERSUS-

REPUBLIC.....RESPONDENT

Coram: Justice Reuben Nyakundi

Katsoleh & Company Advocates for the Applicants

Ms. Njoki for the State

RULING

The Applicants **Shauri Kahingi Kaingu** and **Kupata Randu Nzai** were arrested on the 24th of July 2020 and subsequently charged with conveying a weapon (spear gun) into a marine protected area without a permit from the Director General of the Kenya Wildlife Service contrary to **Section 102 (1) (f) of the Wildlife Conservation and Management Act 2013 (revised edition 2018)**.

Both accused persons plead guilty to the offence as read out to them. By a decision of the **Chief Magistrate Hon. Dr. Julie Oseko CM** made on 27th July 2020, they were convicted on their own guilty plea and were sentenced to a fine of Ksh.200,000/= or to serve two years' imprisonment.

The accused persons through their learned counsel now approach this Court seeking for a revision of the learned trial magistrate's decision. They pray that the decision of 27th July 2020 be set aside and the Applicants be allowed to take a fresh plea. Their claim is premised on Section 115 of the Criminal Procedure Code. Counsel avers that the accused persons admitted to the charge due to the fact that they were misadvised by the officers who arraigned them in court. That they were in fear, remorseful and illiterate.

Analysis and Determination

I have read the Applicant's application and appreciated the contents therein. For starters, the Section 115 of the Criminal Procedure Code which is contended to provide for fresh plea taking is a misquotation of the law. Having said that, it seems to me that the Applicants are seeking a revision of the decision of the trial magistrate dated 27th July 2020.

Section 362 of the Criminal Procedure Code provides:

“The High Court may call for and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court.”

The record of proceedings being called into question here relate to a plea of guilty and a sentencing. The relevant excerpt of the proceedings is reproduced below:

PROCEEDINGS

Date: 27/7/2020

Before Hon. Dr. Julie Oseko CM

Court Prosecutor — Nyoro/Njoki

Court Assistant Hamisi

Accused 1 Present

Accused 2 — Present

Interpretation English/Kiswahili

The substance of the charge and every element thereof has been stated to the accused person (s) in a language that he/she understands who being asked whether he admits or denies the truth of the charge(s) replies:

Accused 1 replies: It is true we had spear gun

Accused 2 replies: It is true we had spear gun

Court Prosecutor: Facts are as per charge sheet.

I produce 2 spear guns Exbt 1

2 masks – diving masks Exbt 2

2 pairs flippers Exbt 3

2 fish barracuda 2.5 kg Exbt 4

Inventory dated 24/7/2020 Exbt 5

Accused 1: Facts are true those are the items we were found with.

Accused 2: Facts are true those are the items we were found with.

Court — Both accused convicted on their own plea of guilty

Mitigation:

Accused 1 – I Have a wife and child.

Accused 2 – I have a wife and children 5 of them

Court: Accused persons are fishermen and are very conversant with that law and are committing the offences knowingly. The offence has a minimum sentence.

Each accused is fined ksh 200, 000/ or serve two years' imprisonment. Right of Appeal 14 days

Hon. Dr. Julie Oseko – CM

27/7/2020

The law that guides the taking of plea by a trial court is set out in Section 207 of the Criminal Procedure Code, Cap 75, Laws of Kenya. The said provision states 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 a 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 an order the court may permit or require the complainant to outline to the court the facts upon which the charge is founded.'

In the case of **Adan –vs- Republic {1973} EA 445** the procedure for taking of a guilty plea is stated as follows:

- (i). The charge and all the essential ingredients of the offence should be read and 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 add any relevant facts.***
- (iv). If the accused does not agree with the facts or raises any question of his guilty in reply must be recorded and a 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 the sentence together with the accused’s reply should be recorded.”***

Looking at the excerpt of proceedings, the charge facing the Applicants were read out to them in a language they understood. Their plea of guilty was thereafter recorded. The prosecution then stated the facts were as per the charge sheet and produced the exhibits. Given an opportunity to explain, the Applicants conceded that the items produced were what they were found with.

In the circumstances, I find that the plea of guilty and subsequent sentence was made in accordance with the law. I accordingly find no incorrectness, impropriety or illegality in the decision of the trial court dated 27th July 2020. The Application for revision lacks merit and is hereby dismissed.

It is so ordered

DATED, SIGNED AND DELIVERED AT MALINDI THIS 1ST DAY OF OCTOBER 2020

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R. NYAKUNDI

JUDGE