



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT BUSIA**

**CRIMINAL APPEAL NO. 3 OF 2019**

**MARK GITHU.....APPELLANT**

**VERSUS**

**REPUBLIC .....RESPONDENT**

*(From the original conviction and sentence in Criminal case No.122C of 2019 of the Chief Magistrate's Court at Busia by Hon. W.K Chepseba—Chief Magistrate)*

**JUDGMENT**

1. **Mark Githu**, the appellant herein, was convicted and sentenced in two counts after pleading guilty to the charges.
2. In count one the charge was making a false declaration contrary to section 54(1) (a) as read with section 54(2) of the Kenya Citizenship and Immigration Act. The particulars were that on the 18<sup>th</sup> November 2017 at Nairobi Huduma Centre, within Nairobi County, being a Burundian national, made a false declaration in the identity card application form and stated that he was a Kenyan, a fact he knew was false and misleading.
3. He was charged with a second count of misleading an Immigration Officer contrary to section 53 (1) (a) as read with section 53 (2) of the Kenya Citizenship and Immigration Act. The particulars of the offence were that on 27<sup>th</sup> February 2019, at Malaba Border Control within Busia County, being a Burundian national, he misled Rosemary Muriuki an Immigration Officer that he was a bona fide Kenyan, seeking validation of a temporary permit TP-AAABRCQ8, a fact he knew was false and misleading.
4. The appellant pleaded guilty to the offences and was sentenced to pay a fine of Kshs.100,000/= or in default to serve fifteen months imprisonment in count one while in count two he was fined Kshs. 200,000/= or serve two years imprisonment. He now appeals against the conviction for he claims his plea was equivocal.
5. The appeal was opposed by the state through Mr. Gacharia, learned counsel who contended that the plea was in accordance with the law.
6. This is a first appellate court. As expected, I have analyzed and evaluated afresh all the evidence adduced before the lower court and I have drawn my own conclusions while bearing in mind that I neither saw nor heard any of the witnesses. I will be guided by the celebrated case of **Okeno vs. Republic [1972] EA 32**.
7. The mode of taking plea correctly was laid down in the case of **Adan vs. Republic [1973]EA 445**, as follows :
  - (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 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 raise 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.*

8. Upon my perusal of the record, I am satisfied that the plea was properly taken for all the steps were observed. There is no reason to fault the learned trial magistrate. There was compliance with the guidelines in the **Adan** case. I therefore have no basis to interfere with the conviction.

9. As a consequence of my analysis of the record, I find that the appeal lacks merit. The same is dismissed.

**DELIVERED and SIGNED at BUSIA this 13<sup>th</sup> day of June, 2019**

**KIARIE WAWERU KIARIE**

**JUDGE**