



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAKURU**  
**CRIMINAL APPEAL NO. 3 OF 2014**

**SIMON GITHAIGA NGUKU ..... APPELLANT**

**VERSUS**

**REPUBLIC ..... RESPONDENT**

*(Appeal from the Sentence of the Senior Principal Magistrate's Court at Nyahururu, Hon. D. K. Mikoyan – Ag. Senior Principal Magistrate delivered on the 9<sup>th</sup> December, 2013 in TR. Case No. 1114 of 2013)*

**JUDGMENT**

The Appellant **SIMON GITHAIGA NGUKU** has filed this appeal challenging his conviction and sentence by the learned Ag Senior Principal Magistrate sitting at the Nyahururu Law Courts.

The appellant was arraigned before the trial court on 9/12/2013 facing the following Traffic Charges

- (i) Driving a motor vehicle under the influence of Alcohol on a Public Road Contrary to Section 45(1) of the Traffic Amendment Act 2012.
- (ii) Failing to wear a PSV Drivers Special Badge Contrary to Section 103A(1) as read with Section 103A(7) of the Traffic Amendment Act, 2012
- (iii) Failing to wear Driver's PSV Uniform Contrary to Section 103(A) as read with Section 103A(7) of the Traffic Amendment Act 2012.
- (iv) Contravening the condition of T.L.B Contrary to Section 8(2) as read with Section 8(6) of Transport Licensing Act, Cap 403.

The charges were all read out to the Appellant and he pleaded guilty to each count. The learned trial magistrate then convicted the appellant and sentenced him to serve ten (10) years imprisonment on Count No. 1 and a fine of Ksh 3,000/= in default three (3) months imprisonment on Counts 2, 3 and 4.

The appellant being aggrieved filed this appeal. **MR. MOTENDE** learned Stated Counsel conceded the appeal **only** with respect to the sentence on Count No. 1.

In the lower court case the appellant entered a plea of Guilty to all 4 Counts. The procedure to be followed by courts in accepting and recording a plea of Guilty are clearly set out in Section 207 of the

Criminal Procedure Code. The trial court must satisfy itself that the plea of guilty is unequivocal.

The procedure in Section 207 was restated in the case of **ADAN Vs REPUBLIC [1973] E.A 445** where the court held as follows –

***“(i) The charge and all the essential ingredients of the offence should be explained to the accused in the 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 questions of his guilt his reply must be recorded and the change of plea entered.***

***(v) If there is no change of plea a conviction should be recorded and a statement of facts relevant to sentence together with the accused’s reply should be recorded”***

In the present case it is quite apparent that this procedure was not followed. After the appellant pleaded guilty by saying ‘*ni kweli*’ to all counts, the court failed to call upon the prosecutor to read out the facts of the charge. As such the appellant was never granted an opportunity to explain, accept or dispute the facts. His plea cannot have been said to have been an unequivocal plea of ‘**Guilty**’.

In Count No. 1 it is alleged that the appellant was driving under the influence of alcohol. No evidence was tendered of this fact. No results of a blood sample taken from appellant or any readings from a breathalyser test exhibited. The fact that an accused person had pleaded guilty to an offence does not remove from the prosecution the legal burden to prove each element of an offence beyond reasonable doubt. No proof was tendered to show that the appellant indeed had an excessive amount of alcohol in his blood stream.

All in all I find that the learned trial magistrate failed to comply with Section 207 in recording the plea. The appellant’s guilty plea was not properly taken and cannot be said to have been unequivocal. For this reason his appeal succeeds. I quash the appellant’s conviction on each of Counts 1, 2, 3 and 4. Similarly the sentence imposed on each of the 4 counts is set aside. The appellant is to be set at liberty unless he is otherwise lawfully held.

**Dated in Nakuru this 11<sup>th</sup> day of November, 2016.**

**Maureen A. Odero**

**Judge**