



**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT NAIROBI**

**CRIMINAL APPEALS NOS 651 & 652 OF 1993 (CONSOLIDATED)**

**FREDRICK OUMA KOKO**

**JULIUS MUKABI OKUNE .....APPELLANTS**

**VERSUS**

**REPUBLIC..... RESPONDENT**

(From Original Conviction and Sentence in Criminal Case No 3824

of 1993 of the ChiefMagistrate’s Court at Nairobi,

BA Achieng, Esq)

**JUDGMENT**

These appeals have been consolidated.

The 1st appellant, Fredrick Ouma Koko (original A1) and the 2nd appellant, Julius Mukabi Okune (original A2) were convicted in Court on plea of guilty by the learned Chief Magistrate of the offence of malicious damage to property contrary to section 330 (1) of the Penal Code. Upon their conviction, each of them was sentenced to a fine of Shs 5000/- or in default to some 6 months imprisonment. The sentence was suspended to enable them to raise the amount of the fine but before the expiry of the date given, their counsel lodged to present appeals. Their appeals to this Court are against conviction and sentence.

The main point taken up on appeal is that the conviction of each of the appellants were defective and it was based on a plea which did not amount to unequivocal plea of guilty to the charge. It is plain from the record that when the charge was read or explained to each of the appellants, his (their) reply thereto was not recorded. The learned Chief Magistrate is on record as having sincerely recorded a plea of guilty without putting down on record whether each of the accused might have stated in answer to the charge. This was a serious omission which renders the whole plea nullity and is contrary to the provisions of section 207 of the Criminal Procedure Code (cap 75, Laws of Kenya). Moreover, the facts of the case were not set out by the prosecutor which merely treated such facts “as per charge sheet”. The record here follows shows that both appellants stated – “lump sum” that the facts were correct. I use the lump sum in this regard because whether each of the appellant is alleged to have stated a reply to the alleged facts shown as per charge sheet is recorded in one sentence against each of them to show that such facts were correct. This is again wrong. The reply of each of the appellants (accused persons) ought to have been separately recorded. A stanner mistake is repeated in recording their mitigation. Clearly the learned Chief Magistrate demonstrated that he was in such a hurry that he did not bother to comply with the procedure laid down by the lower court of appeal for Eastern province in the case of *Adan –v- R* [1973] KLR 143 EA 445 see also *Lusitu –v- R* [1977] KLR 143 learned Asst DPP Mr Etyang conceded to the appeals and I think rightly so.

I am satisfied that the conviction of each of the appellant was unsafe and was based on a plea which did not amount to unequivocal plea of guilty to the charge. Consequently, I allow these appeals, I quash the

conviction of each of the appellants and set aside the sentence that was imposed on each of them. I order that each of them shall be set free and be released forthwith unless otherwise lawfully held. If any fines were paid I order that the same shall be refunded. I have so ordered.

Dated and Delivered at Nairobi this 21<sup>st</sup> Day of June, 1993

**S.O. OGUK**

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**JUDGE**