



**REPUBLIC OF KENYA**

**Ng'ang'a v Republic**

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**High Court at Nairobi August 29, 1986**

**Mbaluto J**

**Criminal Appeal No 387 of 1986**

**August 29, 1986 Mbaluto J delivered the following Judgment.**

The appellant was charged in the resident magistrate's court at Githunguri with the offence of being in possession of chang'aa contrary to section 3(1) as read with section 4(1) of the Chang'aa Prohibition Act. After his plea admitting the charge was recorded, the court entered a plea of guilty. Therefore the prosecution stated that the facts were as per charge sheet and the court proceeded to record a conviction without giving the appellant an opportunity to say anything and sentenced the appellant to 6 months imprisonment.

The appellant has now appealed to this court against both the conviction and sentence. The grounds of appeal are that the learned acting resident magistrate erred in law and in fact in basing his conviction on a plea that was not unequivocal and that the sentence was manifestly excessive in the circumstances. In support of this appeal the appellant argued that at the court below, he thought he was being charged with having drunk the chang'aa and not with its possession. He said that if he had realized that the charge before him was in possession of chang'aa he would not have admitted offence.

The manner in which pleas of guilty should be recorded and the steps which should be followed are clearly laid down in the case of *Adam vs Republic* [1973] E A 445. After recording appellants plea of guilty, the prosecution should have stated the facts. In my view it was amongst merely to say "facts per charge sheet" as that absolutely nothing to what the court and the appellant already knew. Thereafter the appellant should have been given an opportunity to dispute or explain the facts or to add any relevant facts. Since no facts were stated by the prosecution at any stage in the instant case the court did not give the appellant an opportunity to say anything on the facts.

In my view the court did not follow the procedure laid down when recording a plea of guilty and the steps to be taken thereon were not in fact taken. In the instant case, this departure from procedure resulted in the appellant admitting an offence which he says he did not commit. Mrs Mueli, state counsel, agrees that the court below did not follow the procedure laid down in *Adam v Republic* she did not therefore support the conviction.

An accused person should not be convicted unless it is certain that he really understood the charge and had no defence to it. As stated in the case cited above, the danger of a conviction on an equivocal plea is obviously greatest where, as in this case, the appellant was unrepresented. From the way the appellant argued his appeal it is clear that he would have changed his plea before a conviction was recorded if the facts had been stated.

For the above reasons the convictions cannot be allowed to stand. The appeal is therefore allowed, conviction quashed and the sentence set aside. The appellant is to be forthwith set free unless lawfully held.