



**Republic v DJK & 2 others (Children's Case E007 of 2022)
[2023] KEMC 106 (KLR) (23 November 2023) (Judgment)**

Neutral citation: [2023] KEMC 106 (KLR)

**REPUBLIC OF KENYA
IN THE GITHONGO LAW COURTS
CHILDREN'S CASE E007 OF 2022
AT SITATI, SPM
NOVEMBER 23, 2023**

BETWEEN

REPUBLIC PROSECUTION

AND

DJK (INITIALS) 1ST ACCUSED

JOSEPH BUURI 2ND ACCUSED

DORIS KANANA BUURI 3RD ACCUSED

JUDGMENT

1. In Count I, the 1st Accused person was charged with the offence of infringing on the right of a child to education contrary to section 7 as read with section 20 of the [Children's Act](#) no. 8 of 2001. The particulars were that on diverse dates between 26th September, 2022 and 29th September, 2022 in Kibaranyaki location within Imenti Central Sub-County in Meru County being the mother of W.M. (Initials) aged 17 years and E.K.(initials) wilfully and unlawfully denied the children the right to education by failing to take them to school.
2. In Count II, the 3 accused persons were jointly charged with the offence of child labour infringing on the right of a child to education contrary to section 7 as read with section 20 of the [Children's Act](#) no. 8 of 2001. The particulars were that on diverse dates between 26th September, 2022 and 29th September, 2022 in Kibaranyaki location within Imenti Central Sub-County in Meru County jointly subjected two Minors W.M. (Initials) aged 17 years and E.K.(initials) to child labour by making them pick tea and to cultivate the farm of Joseph Matheu Buuri.
3. The accused persons pleaded not guilty to all the charges and were all admitted to reasonable bailbond terms.



4. The DPP's case was conducted by Prosecution Counsel Kibiti Dixon while the Accused persons were represented by Mr. Gichunge, Advocate of the High Court.

The DPP'S Case

5. Before delving into the DPP's case the court's attention has taken note of an important question touching on the legality and the manner in which the DPP has framed the charges.
6. As can be seen from the record reproduced in the foregoing paragraphs, the 3 accused persons have been charged with 2 counts:
 - a. The first count contains 2 distinct and separate complainants: W.M. and E.K. (initials).
 - b. The second count contains 2 distinct and separate complainants: W.M. (initials) and E.K. (initials).
7. From the authorities, this manner of framing has been held to amount to a duplex charge because each complainant is required to appear in a separate and distinct charge against each accused person. A similar situation arose in the case of *Nelson Chakaile Mukelem v Republic* [2021] eKLR (J. M. Bwonwong'a J.)

“The relevant law that governs the framing of charges is found in section 137 (a) (v) of the *Criminal Procedure Code* (Cap 75) Laws of Kenya; which reads as follows: “where a charge or information contains more than one count, the counts shall be numbered consecutively; ...”.

The learned Judge went on to hold:

“It is clear from the charge sheet that there are three complainants in the charge namely Isiaya Chumaita, Lotukei Seromuk and Clement Kilipaa.

In accordance with the dictates of section 137 (a) (v) of the *Criminal Procedure Code*, *supra*, each complainant should have been the subject of one count or charge. As it is, the charge contains three counts in one count; which is contrary to the mandatory provisions of section 137 (a) (v) of the *Criminal Procedure Code*, *supra*. It therefore follows that the count or charge is bad for duplicity I therefore find that the charge as framed is not in conformity with the constitutional provisions that require a charge to be detailed to enable the accused to answer it. Furthermore, it is also bad for duplicity for charging three counts or charges in one count, which is contrary to section 137 (a) (v) of the *Criminal Procedure Code*, (*supra*).

In the circumstances, I find that the trial of the appellant was fundamentally defective. I therefore find that it is moot to consider the grounds of appeal; since they are now moot or academic.

The upshot of the foregoing is that the appellant's appeal succeeds with the result that both the conviction and sentence are hereby quashed.”

8. Ideally, the DPP ought to have amended the charges before the closure of their case as is provided for under section 214 of the *Criminal Procedure Code* which provides as follows:

214. Variance between charge and evidence and amendment of charge

Where at any stage of a trial before the close of the case for the prosecution, it appears to the court that the charge is defective, either in substance or in form, the court



may make such order for the alteration of the charge, either by way of amendment of the charge or by the substitution or addition of a new charge, as the court thinks necessary to meet the circumstances of the case. (underlining mine)

9. The record further shows that when the undersigned magistrate took over the conduct of the trial on 5th October, 2023 following the transfer of the previous magistrate handling the case, these 3 accused persons were already on their defence and this meant that the DPP was legally precluded by section 214 of the Criminal Procedure Code from amending the charges to cure the duplicity. When the 3 accused persons came to court on 5th October, 2023 they opted under section 200(3) of the Criminal Procedure Code to proceed from the last point reached and gave their respective defences before the court fixed the matter for judgement today 23rd November, 2023.
10. Having arrived at this legal imbroglio, and being guided by the above-cited authority this Honourable Court holds that the 2 charges are bad for duplicity and made this case fundamentally defective and would entitle the defence to an acquittal under section 215 of the Criminal Procedure Code.
11. In the result, the court dismisses the case on account of the duplicity of the charges which could not be cured following the closure of the DPP's case under section 214 CPC. The 3 accused persons are acquitted and set at liberty unless otherwise lawfully held. The cash bails are released to the respective depositors.

Right of appeal is 14 days.

DATED, READ AND SIGNED AT GITHONGO THIS 23RD DAY OF NOVEMBER, 2023

HON. T.A. SITATI

SENIOR PRINCIPAL MAGISTRATE

GITHONGO LAW COURTS

