Happi v Republic (Criminal Appeal 25 of 2019)
[2025] KECA 2174 (KLR) (11 December 2025) (Judgment)

Neutral citation: [2025] KECA 2174 (KLR)

REPUBLIC OF KENYA

IN THE COURT OF APPEAL AT NYERI

CRIMINAL APPEAL 25 OF 2019

K M'INOTI, A ALI-ARONI & PM GACHOKA, JJA

DECEMBER 11, 2025

BETWEEN

LIBANI HAPPI ..... APPELLANT

AND

REPUBLIC ..... RESPONDENT

JUDGMENT

1. The appellant, Libani Happi, was charged in Maua SPMC Criminal Case No. 4161 of 2010 with the offence of defilement contrary to section 8 (1) as read with section 8 (2) of the *Sexual Offences Act*. The particulars of the offence were that on 3rd December 2010 at Manyatta Charabdicha Kinna Division of Garbatulla District Eastern Province, the appellant penetrated the genital organs of K.R., aged 7 years with his penis. The appellant also faced an alternative count of committing an indecent act with a child contrary to section 11 (1) of the *Sexual Offences Act*. The particulars of the offence were that on the same day and place, the appellant touched the buttocks and vagina of K.R., aged 7 years old.

2. When the appellant was arraigned before the trial court, he pleaded guilty to the main count of defilement. The prosecution then read out the facts of the case leading to the charges preferred against him. The appellant responded that the facts were correct. The trial court in the circumstances convicted the appellant on his own plea of guilty. He was sentenced to life imprisonment as provided by the *Sexual Offences Act*. On his first appeal, the High Court considered the provisions of section 348 of the Criminal Procedure Code and found that the procedure adopted by the trial court in convicting him on a plea of guilty was lawful. The appeal was therefore dismissed.

3. The appellant is aggrieved by those findings, hence this appeal.

   He filed his memorandum of appeal dated 14th February 2019. The same was accompanied by grounds of appeal that raised five grounds disputing the findings of the first appellant court. He also filed

supplementary grounds of appeal dated 12th August 2025 that raised three grounds impugning the findings of the first appellant court.

4. We have taken the liberty to summarize those grounds as follows: that the learned judge failed to observe that the appellant was not examined in order to ascertain the truth of the matter; that the evidence before the trial court was inconsistent and conflicting; that the conviction was based on an equivocal plea; that the language used by the appellant was not indicated, thus Article 50 of the *Constitution* was infracted; that the prosecution failed to discharge its burden of proof to the required standard; and that his defence was not considered. For those reasons, the appellant prayed that his appeal be allowed, his conviction be quashed and the sentence be set aside.

5. The appeal was heard on 2nd September 2025 when it was disposed of by way of written submissions that were orally highlighted. The appellant was present and represented by learned counsel Ms. Nelima, while Principal Prosecution Counsel Ms. Mengo represented the respondent.

6. According to the appellant's written submissions dated 13th August 2025, the two courts below sustained a conviction on an equivocal plea. This is because the manner in which the plea was taken violated the appellant's constitutional rights enshrined in Article 50 (2) (b) and (3) of the *Constitution*. The appellant exposited that from the record, it was not clear what language was used to read out the charges and the facts to the appellant and what language was used by the appellant in articulating his response. He opined that, as a result, it was not clear from the record whether the appellant understood the charges.

7. Turning to the learned judge's interpretation of the proceedings, the appellant pointed out that the High Court incorrectly found that the appellant responded in Kiswahili. In his view, the learned judge erred in making a grave assumption that he responded in Kiswahili when the record did not indicate as such. Finally, the appellant pointed out that the P3 form and the charge sheet were at variance regarding the date the offence occurred. For those reasons, the appellant prayed that his appeal be allowed.

8. The respondent opposed the appeal. Ms Mengo filed written submissions dated 12th August 2025. She submitted that the grounds espoused to support the appeal failed to challenge the legality of the sentence set out in section 348 of the Criminal Procedure Code. She opined that the plea was taken in a language that the appellant understood. He confirmed that the facts read out to him were correct and true. The trial court then convicted the appellant on his own plea of guilty. She continued that the court then considered his mitigation and ultimately issued a life sentence. In her view, the procedure met the parameters set out in law. She submitted that the procedure was evident that the appellant knew what he was pleading guilty to, and considering the fact that the complainant was aged 7 years, the life sentence was lawful. She prayed that the appeal be dismissed.

9. We have considered the parties' diametrically opposed written submissions, examined the record of appeal and analyzed the law. The duty of this Court sitting in a second appeal was explained in the case of Chemagong vs. Republic [1984] KLR 611 as follows:

> The Court cannot interfere with concurrent findings of fact by the two courts below, unless such findings are based on no evidence or on a misapprehension of the evidence or where the courts below are shown to have taken into account wrong principles in making their findings."

10. The main issue for determination is whether the appellant was convicted on an unequivocal plea. In other words, were the two courts below correct in sustaining a conviction on the appellant's own plea

of guilty? This Court in John Muendo Musau vs. Republic [2013] KECA 266 (KLR) set out the parameters that a court ought to consider where an appellant enters a guilty plea:

> On this argument, we wish to state that we have outlined the procedure followed before the trial court at the time of taking the plea. The legal principles to be applied in plea taking in all criminal cases were well enunciated in the locus classicus case of Adan vs Republic [1973] EA 445 where the Court held:
>
> 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 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 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 facts relevant to sentence together with the accused's reply should be recorded."
>
> We want to add here that if the accused wishes to change his plea or in mitigation says anything that negates any of the ingredients of the offence he has already admitted and been convicted for, the court must enter a plea of not guilty. That is to say that, an accused person can change his
>
> plea at any time before sentence. The procedure as laid out in Adan vs Republic (supra) is also provided for under section 207 of the Criminal Procedure Code."

11. In answering this question, we have examined the relevant part of the proceedings. When the appellant was arraigned in court to take a plea on 6th December 2010, the following sequence of events took place as appears from the record:

> " Interpretation: Eng/Kiswahili
>
> Court: the substance of the charges read and explained to the accused person in a language he understands who replies:
>
> It is true. Prosecutor.
>
> The facts are that on 3.12.2010 at Manyatta Charabdicha in Kinna Division of Garbatulla District at around 7.00 pm the complainant KR was heading to nearby bushes to relieve herself. She met the accused who grabbed her and carried her into the bushes. The accused then covered her mouth with his hand and removed her innerwear. He placed her on the ground and lay on her and penetrated her. When he finished, he released the complainant who run home crying. Her uncle GA rushed to investigate and found the accused near the scene. The uncle inquired from the complainant what had happened and she told him that she had been defiled by Libani Happi whom she knew. The uncle arrested the accused and took him to the chief's office and then the D. O's office and ultimately to Garbatulla police station. The complainant was escorted to Garbatulla police station and issued with a P3

form to attend hospital. She was treated at Garbatulla District Hospital and it was confirmed that she had been defiled. She had tears involving the labia majora, minora and hymen. Stains of blood over the vagina orifices and thighs. The injury was classified as harm. I produce the treatment card (P.Ex.1) and P3 form (P.Ex.2). After investigations, the accused was charged.

Accused: The facts are correct.

Court: Plea of guilty entered and accused convicted on own plea.

Prosecutor: No record.

Accused in mitigation: I plead for mercy. I blame the devil for misleading me.

Sentence

Accused has pleaded guilty to the charge and is treated as a first offender. The offence is serious and attracts a life sentence. The attack on the complainant was beastly considering her age. She has sustained tears in her private parts. The accused's mitigation that the devil misled him is rejected. A harsh sentence is called for. Accordingly accused sentenced to serve life imprisonment."

12. From the above proceedings, it is discernible that the appellant understood the charges. The substance of the charge and every element of it were read out to him in a language that he understood, which from the record was Kiswahili. It is for this reason that he pleaded guilty. Thereafter, the facts were read out to the appellant, to which he responded that they were correct. Those facts which he admitted fully disclose all the elements the offence with which he was charged. For the appellant to state that the specific language used to read out the charges and facts, as well as his response, was not indicated is an afterthought. If the appellant did not understand the language in which the plea was taken and the facts were read out, why would he plead in mitigation for mercy, claiming that he was misled by the devil? We find that the appellant properly understood the charges and therefore gave an unequivocal plea.

13. In our view, we see no reason to disturb the concurrent findings of the two courts below. The record is clear that the charge and the facts were read out in a language that the appellant understood. Accordingly, the appeal lacks merit. It is hereby dismissed in its entirety.

DATED AND DELIVERED AT NYERI THIS 11TH DAY OF DECEMBER 2025.

K. M'INOTI

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JUDGE OF APPEAL

ALI-ARONI

.....

JUDGE OF APPEAL

M. GACHOKA C.Arb, FCIArb.

.....

JUDGE OF APPEAL

I certify that this is a True copy of the original

Signed

DEPUTY REGISTRAR