Sono v Republic (Criminal Appeal E053 of 2023)
[2025] KECA 2110 (KLR) (5 December 2025) (Judgment)

Neutral citation: [2025] KECA 2110 (KLR)

REPUBLIC OF KENYA

IN THE COURT OF APPEAL AT MOMBASA

CRIMINAL APPEAL E053 OF 2023

AK MURGOR, F TUIYOTT & P NYAMWEYA, JJA

DECEMBER 5, 2025

BETWEEN

THOMAS ARINGEU SONO .... APPELLANT

AND

REPUBLIC .... RESPONDENT

(Being an appeal from the Judgment of the High Court of Kenya at Voi (A. Ong'injo, J.) delivered on 7th November, 2022. in Voi High Court Criminal Appeal Number E038 of 2022)

JUDGMENT

1. Thomas Aringeu Sono, the Appellant was charged 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 the 10th day of May 2022 at California Estate within Taita –Taveta county he unlawfully and intentionally caused his genital organ (penis) to penetrate the female genital organ of F.W a child aged 4 years who was mentally challenged."

2. The Appellant was arraigned before the Principal Magistrate's Court at Taveta on 13th May 2022. When the plea was read to him, he answered:

   " Ni ukweli

   According to the proceedings, the Appellant was informed of the penalty for the offence he faced and the plea of guilty that was entered. He was subsequently convicted on his own plea of guilt and sentenced to serve life imprisonment.

3. Aggrieved, the Appellant filed an appeal to the High Court on the basis that the learned trial magistrate was in error in law and facts in convicting without considering that the burden of proof was not properly established; that the chemical and medical documents produced did not prove the present case

beyond reasonable doubt; in convicting without considering his alibi defense which was watertight; in convicting without considering that the age of the complainant was not determined in accordance to Section 8 (2) of the *Sexual Offences Act* and without appreciating that the voire dire enquiry was not conducted on the complainant in accordance with Section 19 of the Oath and Statutory Declaration Act and the *Evidence Act*.

4. The 1st appellate Judge upon considering the grounds of appeal above stated that the Appellant was convicted on his own plea of guilt, and had not appealed against the sentence, and thereby rejected the appeal.

5. Aggrieved, the Appellant has filed an appeal to this Court on grounds that; the learned Judge was in error in failing to sagaciously draw an inference that the Appellant's plea of guilty was not unequivocal pursuant to Adan Adan vs Republic [1973] EA 445; in failing to warn the Appellant on the repercussions of pleading guilty to the charge; in failing to appreciate that the Appellant was not subjected to fair trial in accordance with Article 50 of the Constitution; in failing to appreciate that the trial court failed in its duty to be cautious when accepting a plea of guilt from an unrepresented/ undefended accused person, and to warn the Appellant that the charge offence he was about to plead guilty to carries a possible life imprisonment; and in failing to ensure that the Appellant understood and appreciated the consequences of pleading guilty to the charge; and finally that the sentence imposed was both harsh and excessive since it was applied in mandatory terms as by law provided and considering the Appellant's mitigation and the unique facts and circumstances of the case.

6. Both the Appellant and the Respondent filed written submissions and when the appeal came up for hearing on a virtual platform, learned counsel Ms Nzambi appeared for the Appellant and learned prosecution counsel Ms. Kanyuira appeared for the Respondent. Mr. J. T'inga assisted the Court with interpretation into the Maa language for the Appellant's benefit.

7. In their written submissions, counsel for the Appellant submitted that the plea was improperly taken as the accused was not informed of the consequences of pleading guilty. Furthermore, the Appellant did not understand either English or Kiswahili, and the court failed to provide a translator to ensure he understood the charges. Given these circumstances, the guilty plea and subsequent sentence should be reconsidered as the plea was not unequivocal.

8. Counsel further submitted that, it was not certain that the prosecutor stated the facts, or that the appellant was given an opportunity to dispute or have the facts explained or to add any relevant facts; that the prosecution in the proceedings stated that "The substance of the charge(s) and every element thereof has been stated by the court to the accused person in the language that he/she understands who being asked whether he/she admits or denies the truth of charges(s) and that the fact that the Appellant replied "NI KWELI" (It is true) does not mean he understood the charges. The trial court record showed that the language preferred by the Appellant was not indicated.

9. On sentence counsel submitted that after the Appellant pleaded guilty, the court did not properly explain the consequences of admitting the charges; that the Appellant was not subjected to a proper plea-taking procedure as the trial magistrate failed to repeat the charges three times, order a psychiatric evaluation to assess fitness to plead, or confirm whether the Appellant understood the language used in court and that the mandatory sentence imposed is excessive and disproportionate given the mitigating factors presented.

10. Counsel submits that in the circumstances; the Appellant seeks a retrial of his case; that the court imposed a mandatory life sentence under Section 8(3) of the *Sexual Offences Act* immediately the Appellant pleaded guilty to the charges against him. The Appellant was convicted and sentenced

without being accorded a chance to defend himself which violated his constitutional right to a fair hearing under Article 50(2) of *the Constitution*.

11. On their part, learned prosecution counsel for the Respondent submitted that none of the grounds of appeal were raised in the High Court, where the Appellant filed his first appeal. The appeal in the High Court was dismissed due to the Appellant's plea of guilty in the trial court, and therefore as stated by the 1st appellate Judge, the appeal to the High Court should have been against the sentence only, which it was not; that this Court should reject the appeal for the reason that the grounds raised in this appeal were never raised in the High Court and therefore this Court cannot determine grounds from which no decision has emanated.

12. Counsel went on to submit that the trial court followed the right procedure in recording the plea of guilty against the Appellant; that it was recorded that the Appellant read the charges in a language that he understood and pleaded guilty after which the facts were read to him and documents in support of the charges produced as exhibits to which he still confirmed were true. The severity of the punishment was explained to him as well and thereafter he was sentenced.

13. Further, counsel submitted that the grounds adduced in the High Court were on a wrong summation, that a hearing of the case was conducted; that upon the plea of guilt, the Appellant waived his right to a full trial. It was submitted that this was a clear case for the tenets of Section 352 (2) of the Criminal Procedure Code to be applied, and the High Court was right in dismissing the appeal.

14. The jurisdiction of this Court as a 2nd appellate court is limited to matters of law as defined in Section 361 of the Criminal Procedure Code.

15. This was affirmed by this Court in David Njoroge Macharia vs Republic [2011] eKLR as follows;

> "That being so only matters of law fall for consideration – see section 361 of the Criminal Procedure Code. As this Court has stated many times before, it will not normally interfere with concurrent findings of fact by the two courts below unless such findings are based on no evidence, or are based on a misapprehension of the evidence, or the courts below are shown demonstrably to have acted on wrong principles in making the findings – see Chemagong v. R [1984] KLR"

16. This appeal arises from the decision of the learned Judge in which he summarily rejected the appeal. Cases in which an appeal may be summarily rejected are laid down in section 352 (2) of the Criminal Procedure Code which provides:

> "Where an appeal is brought on the ground that the conviction is against the weight of the evidence, or that the sentence is excessive, and it appears to a judge that the evidence is sufficient to support the conviction and that there is no material in the circumstances of the case which would raise a reasonable doubt whether the conviction was right or lead him to the opinion that the sentence ought to be reduced, the appeal may, without being set down for hearing, be summarily rejected by an order of the judge certifying that he had perused the record and is satisfied that the appeal has been lodged without any sufficient ground for complaint."

See also Gilbert Shikondi vs Republic [2014] KECA 455 (KLR)

17. This Court in EKK vs Republic [2023] KECA 599 (KLR) held that:

> " ...summary rejection of the appeal in the present circumstances could only be on the basis that, the appeal did not disclose any grounds for interference with the impugned decision"...
>
> "...it is trite law that summary rejection of appeals under Section 352 of the Criminal Procedure code is an exceptional power reposed in a Judge of the High Court and should be invoked sparingly and should be exercised in the clearest of cases and, where, on the face of it, there is no merit at all in the appeal in question. It is a power which cannot be exercised with carefree zeal. (See: Okello v Republic [2003] KLR 205 and NKW v Republic [2003] eKLR)."

18. In the case of Ayub Okobola Wabuti vs Republic [2015] KECA 16 (KLR) this Court held;

> " The summary rejection of the appellant's appeal by the High Court under section 352(2) of the Criminal Procedure code was on the grounds, as already indicated, that the appeal had been lodged without any sufficient grounds for complaint.

19. Section 352(2) of the Criminal Procedure Code provides for summary rejection of appeal where the appeal is bought on the ground that the conviction is against the weight of evidence, or that the sentence is excessive. If it appears to the judge that there is sufficient evidence to support the conviction, and there is no material to raise doubt on the conviction or to warrant the reduction of sentence, the judge may without setting the appeal for hearing reject it summarily. The judge does that, as was the case here, by making an order certifying that he has perused the record and is satisfied that the appeal has been lodged without sufficient grounds for complaint. In that event the appellant need not be given opportunity by the High Court to urge his appeal.

    7. It was held in Aggrey vs. Republic [1983] KLR 649 that the exercise of the power to summarily reject an appeal under that provision is strictly limited to cases where the appeal is brought on grounds that the conviction is against the weight of the evidence or the sentence is excessive. Where other substantial grounds of appeal are raised the powers under Section 352(2) of the Criminal Procedure Code should not be invoked. See also Ouma v Republic Criminal Appeal No. 91 of 1985[1986] eKLR."

20. The appeal before us stemmed from a decision of the 1st appellate court summarily dismissing the appeal. In dismissing the appeal, the learned Judge stated:

> " Appellant was convicted on own plea and sentenced to serve life imprisonment. He has not appealed against the sentence. The appeal is rejected."

21. The grounds of appeal that were before the High Court were that; the learned trial magistrate was in error in convicting without considering that the burden of proof was not properly established; in convicting without considering that the chemical and medical documents produced did not prove the present case beyond reasonable doubt; in convicting without considering alibi defense was watertight; in convicting without considering that the age of the complainant was determined in accordance to Section 8 (2) of the *Sexual Offences Act* and in convicting without considering that voire dire enquiry was not conducted on the complainant in accordance to Section 19 of the Oath and Statutory Declaration Act and the *Evidence Act*.

22. court, and that his appeal was not against sentence, an examination of the grounds of appeal that were before the High Court clearly shows that the Appellant did not understand or appreciate what

transpired in court when his plea was taken. What the grounds disclose is that, the Appellant is still awaiting to be subjected to a full trial and to have an opportunity to be heard.

23 . When the proceedings on the record are examined, what comes out is that we are not able to discern whether upon the charges being read out they were understood by the Appellant. Further, nothing in the proceedings discloses whether they were read out to him in a language he understood, as there is nothing in the record that shows that on the material day there was interpretation into Kiswahili or Masai, or a language that he understood. There is also nothing that showed that he had the benefit of an interpreter, as was the case in this Court when he was afforded Maa language interpretation. Just because the Appellant's responded to the charges "ni kweli" does not mean that he clearly understood the charges he faced or the ramifications of a plea of guilty.

24. In effect, grounds of appeal having been against conviction instead of the sentence, signaled some underlying anomaly which in our view the learned Judge would have detected if the appeal had not been dismissed summarily. We find that had the Judge provided the Appellant an opportunity to be heard rather than summarily dismissing his appeal, the Judge would have arrived at a different conclusion, having regard to the circumstances surrounding the Appellant's case.

25. Consequently, it becomes necessary to interfere with the Judgment of the High Court at Mombasa delivered on 7th November 2022. Accordingly, we set aside the Judgment and remit the matter back to the High Court for hearing and determination of the Appellant's appeal.

26. In sum, the appeal succeeds and is allowed to the extent of the following orders:

1. The Judgment of the High Court at Mombasa dated 7th November 2022 be and is hereby set aside.
2. The Appellant's appeal is remitted back to the High Court at Mombasa for hearing and determination in accordance with the law by another Judge of the High Court other than Ong'injo, J;
3. We direct that the Appeal be heard expeditiously, and without delay.
4. In the meantime, the Appellant to be remanded in custody pending the hearing of his appeal.
5. The Deputy Registrar of this Court shall transmit a copy of this judgment to the Presiding Judge of the High Court at Mombasa together with the record of appeal immediately after its delivery.

It is so ordered.

DATED AND DELIVERED AT MOMBASA THIS 5TH DAY OF DECEMBER, 2025.

A.K. MURGOR

....

JUDGE OF APPEAL

F. TUIYOTT

....

JUDGE OF APPEAL

P. NYAMWEYA

....

JUDGE OF APPEAL

I certify that this is the true copy of the original

signed

DEPUTY REGISTRAR