



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MIGORI

CRIMINAL APPEAL NO. E015 OF 2021

SAMUEL CHACHA MATIKO.....APPELLANT

VERSUS

REPUBLIC..... RESPONDENT

(From the original conviction and sentence in Criminal Case NO. 225 of 2020 of the Senior Principal Magistrate’s Court at Migori by Hon. J. Munguti–Senior Principal Magistrate)

JUDGMENT

1. Samuel Chacha Matiko, the appellant herein, was convicted after pleading guilty to the offence of manslaughter contrary to section 202 as read with section 205 of the Penal Code.
2. The particulars of the offence are that on the 29th day of January 2021 at Nyankore sub-location, Kuria West sub-County within Migori County, unlawfully killed Elizabeth Weisiko Rioba.
3. The appellant was sentenced to fifty years’ imprisonment. He was aggrieved and filed this appeal against both the conviction and the sentence. He raised grounds of appeal as follows:
 - a) The appellant pleaded guilty to the charge herein because he did not know what was required in plea-taking.
 - b) The trial court erred both in law and fact by failing to comply with Article 50(2) (g) (h) of the Constitution of Kenya.
4. The respondent contested the appeal with M. Ikol Esaba, the learned counsel, citing the following grounds of opposition:
 - a) That the plea was unequivocal.
 - b) That the sentence meted out was legal.
5. This is a first appellate court. As expected, I have analyzed and evaluated all the evidence adduced before the lower court afresh. I have concluded, having neither seen nor heard any witnesses. I will be guided by the celebrated case of **Okeno vs Republic [1972] EA 32**.

6. In the leading case of **Joseph Marangu Njau v Republic [2015] eKLR**, the Court of Appeal stated:

Whereas all the perils a guilty pleader embraces may not much matter in petty offences or in mere infractions which do not present much risk to life or liberty, much is at stake in the offences that attract more penal severe consequences. In the case before us, the balance of the appellant's natural life stood to be spent behind bars upon conviction.

*Cognizant of the ever-present dangers of misjustice [sic] in guilty pleas, the courts have been vigilant to act upon and to uphold them only when they are clear, express, unambiguous and unequivocal. When a plea of guilty is challenged as not having been entered unequivocally, it becomes a matter of law that permits the superior courts to entertain appeals notwithstanding Section 348 of the CPC aforesaid. The predecessor of this Court considered and authoritatively laid down the manner in which pleas of guilty should be recorded and the steps which should be followed, in the decades-old case of *Adan vs. Republic [1973] EA 445*, as follows;*

“(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 raise any question of his guilt, his reply must be recorded and a change of plea entered;

(v) if there is no change of plea, a conviction should be recorded, and a statement of the facts relevant to sentence together with the accused's reply should be recorded.”

In the instant case, I will endeavour to establish if the plea adhered to the procedure described in *Adan* (supra).

7. The appellant appeared in court for a plea on February 18, 2021. The charge was read to him in Kiswahili, and he confirmed that he understood it. When asked to respond, he admitted the charge. The facts were also read to him, and he agreed they were correct.
8. The facts he read and confirmed correctly supported the manslaughter charge. A postmortem report copy shows that the deceased died from severe head injuries caused by blunt trauma.
9. I, therefore, find that the plea by the appellant was unequivocal.

10. Section 348 of the Criminal Procedure Code provides as follows:

No appeal shall be allowed in the case of an accused person who has pleaded guilty and has been convicted on that plea by a subordinate court, except as to the extent or legality of the sentence.

11. Having confirmed that the plea was taken correctly, I will now try to assess the legality of the sentence. It is important to remember that an appellate court will only interfere with the trial court's sentence if there are circumstances significant enough to justify altering the trial court's decision. These circumstances were clearly demonstrated in the case of **Nilsson vs. Republic [1970] E.A. 599**, as outlined below.

The principles upon which an appellate court will act in exercising its jurisdiction to review sentences are pretty established. The court does not alter a sentence on the mere ground that if the members of the court had been trying the appellant, they might have passed a somewhat different sentence, and it will not ordinarily interfere with the discretion exercised by a trial Judge unless, as was said in JAMES Vs. REX (1950), 18 EACA 147, it is evident that the Judge has acted upon some wrong principle or overlooked some material factor. To this, we would also add a third criterion, namely, that the sentence is manifestly excessive in view of the circumstances of the case. R Vs. SHERSHEWSITY (1912) C.CA 28 T.LR 364.

12. Section 205 of the Penal Code provides as follows:

Any person who commits the felony of manslaughter is liable to imprisonment for life.

13. The appellant was intoxicated at the time of the offence and was a first-time offender. Given these circumstances, I am persuaded to set aside the sentence given by the trial magistrate. The trial court's sentence is replaced with a term of 25 years' imprisonment, commencing on 29th January 2021, the date of his arrest.

Delivered and signed at Migori, this 26th day of February 2026

KIARIE WAWERU KIARIE

JUDGE