Kooria v Republic (Criminal Appeal E051 of 2025)
[2026] KEHC 5942 (KLR) (30 April 2026) (Judgment)

Neutral citation: [2026] KEHC 5942 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT THIKA

CRIMINAL APPEAL E051 OF 2025

FN MUCHEMI, J

APRIL 30, 2026

BETWEEN

NAHASHON MUCHIRI KOORIA ..... APPELLANT

AND

REPUBLIC ..... RESPONDENT

(Being an Appeal against the conviction and sentence in the Chief Magistrate Court in Ruiru by Honourable C. A. Okello (PM), in Criminal Case No. E1783 of 2025 on 3rd November 2025)

JUDGMENT

Brief Facts

1. The appellant lodged this appeal against the entire judgment of the Chief Magistrate, Thika. He was charged of the offence of grievous harm contrary to Section 234 of the Penal Code and convicted on his own plea of guilty. He was then sentenced to serve five (5) years imprisonment on 03/11/25.

2. Being aggrieved by the judgment, the appellant lodged this appeal citing 6 grounds summarised as follows:-

    a. The learned trial magistrate erred in law in convicting the appellant on an equivocal plea of guilty contrary to the requirements of law and judicial precedent on the proper procedure for plea taking.

    b. The learned trial magistrate erred both in law and in fact by failing to take and record a separate plea on each count on the charge sheet and instead recorded a general response of "it is true" without specifying the count to which the plea related.

    c. The learned trial magistrate erred in law and in fact by failing to record a change of plea to not guilty after the appellant's mitigation disclosed a defence and contradicted the prosecutions facts, thereby rendering the plea equivocal and subsequent conviction unsafe.

d. The learned trial magistrate erred in law and in fact by failing to warn the appellant of the consequences of pleading guilty especially considering that he was unrepresented, the charges were serious and the potential sentence was severe.

e. The learned trial magistrate erred in law and in fact by failing to inform the appellant of his right to legal representation or to take reasonable steps to ensure he understood the nature of the charge and its consequences before proceeding with the plea.

f. The learned trial magistrate erred in law and in fact by imposing a sentence of five (5) years imprisonment which was manifestly harsh, excessive and disproportionate in the circumstances of the case.

3. Parties disposed of the appeal by written submissions.

The Appellant's Submissions

4. The appellant refers to Section 207 of the Criminal Procedure Code and the cases of Adan vs Republic [1973] EA 445 and Ombena vs Republic [1981] KECA 28 (KLR) and submits that although he faced two distinct counts, the trial record shows that only one composite plea was recorded in respect of both counts. Further, when the prosecution outlined the facts, the record does not distinguish which facts related to which specific count. The appellant further submits that the error of treating the counts as one continued throughout the proceedings which omission renders the proceedings ambiguous and legally unsafe. Further, the said practice contravened on his constitutional rights under Article 50(2)(b), (k), (c) and (q) thus denying him an opportunity to understand and respond separately to each offence.

5. The appellant relies on the cases of John Muendo Musau vs Republic [2013] eKLR and Republic vs Muchenditsi alias Mosee (Criminal Case 27 of 2020) [2024] KEHC 12016 (KLR) (9 October 2024) (Ruling) and submits that the plea was not unequivocal as his mitigation introduced matters that negated the plea of guilty and raised a defence. The appellant argues that where an accused raised facts in mitigation that contradict the plea, the plea cannot be treated as unequivocal and a conviction based on such plea is unsafe.

6. The appellant submits that the offence framed, the particulars of the offence, the facts read to him and the exhibits produced by the prosecution are material contradictory, making it unsafe to sustain a conviction on the basis of such inconsistent facts. According to the medical report from Aga Khan Hospital dated 28th October 2025, on the night of 23rd October 2025, the complainant felt dizzy, tripped on a rock and fell headfirst onto the floor sustaining a 2cm wound and experiencing loss of consciousness for an unspecified duration with no convulsions reported. The appellant further submits that the medical report therefore attributes the injury to a fall. However in the medical history section of the P3 Form, the complainant alleged that she was assaulted by a person well known to her on 23rd October 2025 at about 2300 hours at Kahawa Wendani sustaining injuries to her head, neck and right upper limbs allegedly caused by blows, slaps and being hit against a hard object or wall. The appellant argues that the central issue arising from the inconsistencies is whether the injury sustained by the complainant resulted from a fall or from an assault by him. The history recorded by the treating doctor supports his mitigation that the injury arose from a fall and is inconsistent with the particulars of the offence, the P3 Form and the facts read to him further demonstrating that the plea could not have been unequivocal and that the conviction was unsafe. The P3 Form discloses two distinct injuries attributed to different causes and timelines according to the medical narrative.

One injury is described as a frontal injury resulting from a fall, while the other refers to a prior alleged assault said to have caused dizziness leading to the fall. This critical distinction is not reflected in the charge sheet or clarified in the facts read to him thereby creating uncertainty as to which specific injury he was allegedly admitting to and further demonstrating that the plea could not have been unequivocal.

7. The appellant further submits that the evidence on record presents material inconsistencies as to the actual venue where the alleged incident occurred, thereby casting doubt on the factual foundation of the charge and the certainty of the plea. The appellant maintains that the fall occurred inside a club where there was mud, the prosecution asserts that the incident took place in his clinic while the medical report describes a rocky surface with a hard floor suggesting an outdoor environment. The appellant argues that the said conflicting accounts are not minor discrepancies but go to the very substance of the alleged act and the circumstances in which the injuries were sustained.

8. The appellant submits that the classification of the injury as "maim" on the P3 Form is inconsistent with the treatment notes from Aga Khan Hospital. The medical report and discharge notes show that the complainant sustained a minor forehead injury with no residual disability. The discharge instructions were limited to keeping the wound clean and dry and avoiding non prescribed ointments. The said facts directly contradict the charge of causing grievous harm

   and undermine the factual basis of the plea, demonstrating that the conviction was unsafe.

9. The appellant further submits that the dates are inconsistent as the charge sheet, the prosecution's narration and the medical report refer to 23rd October 2025 and he maintains that it was 24th October 2025 and the P3 Form records 26th October 2025 on one page and 23rd October 2025 on another.

10. The appellant relies on the cases of Fatehali Manji vs Republic (1964) EA 481 and Muiruri vs Republic [2003] KLR 552 and submits that the error leading to the impugned conviction was occasioned by the court. The appellant further submits that he was sentenced on 3rd November 2025 and has already served four months imprisonment as at 11th March 2026, thus an order for retrial would not serve the interests of justice but would occasion prejudice and injustice to him.

The Respondent's Submissions

11. The respondent relies on the case of Adan vs Republic [1973] EA 445 and submits that although the appellant alleges that he was faced with two charges, the charge sheet shows that only one charge was approved by the prosecutor which is grievous harm. The said charge is signed by the prosecutor bearing her name and the official stamp of the Office of the Director of Public prosecution dated 3/11/2025. The other count of threatening to kill was crossed and was not signed nor did it bear the official stamp of the ODPP hence the said charge was not approved.

12. The respondent further submits that the dates by the prosecution are in line with the facts presented and also the medical documents produced. The cause of action arose on diverse dates of 11/10/2025 – 23/10/2025. On 23/10/2025, it is the prosecution's case that at around 11pm the two were at the clinic and after a quarrel, the appellant pushed the complainant and she hit her head on a wall. She lost consciousness and on gaining consciousness, she found the appellant stitching her on the forehead. The same was confirmed by the appellant during mitigation when he confirmed that they were at the clinic and he stitched her. Further, the medical records prove that the injuries sustained by the complainant was as a result of assault by a person known to her, who is the appellant herein. The respondent submits that the proper procedure was observed during plea taking on 3/11/2025.

13. The respondent submits that the sentence meted is the most lenient sentence under the law as Section 234 of the Penal Code provides for life imprisonment. The respondent submits that the sentence is not

harsh or excessive and urges the court to enhance the sentence according to Section 234 of the Penal Code considering the serious injuries sustained by the complainant.

Issues for determination

14. The appellant has cited 6 grounds of appeal which can be compressed into two main issues:-

    a. Whether the plea was equivocal.

    b. Whether the sentence meted out against the appellant is justified.

The Law

15. This being a first appeal, this court is guided by the principles set out in the case of David Njuguna Wairimu vs Republic [2010] eKLR where the Court of Appeal stated:-

> " The duty of the first appellate court is to analyse and re-evaluate the evidence which was before the trial court and itself come to its own conclusions on that evidence without overlooking the conclusions of the trial court. There are instances where the first appellate court may, depending on the facts and circumstances of the case, come to the same conclusions as those of the lower court. It may rehash those conclusions. We do not think there is anything objectionable in doing so, provided that it is clear that the court has considered the evidence on the basis of the law and the evidence to satisfy itself on the correctness of the decisions.

16. Similarly in the case of Okeno vs Republic [1972] EA 32 where the Court of Appeal set out the duties of the appellate court as follows:-

> " An appellant on a first appeal is entitled to expect the evidence as a whole to be submitted to a fresh and exhaustive examination (Pandya vs Republic (1957) EA 336) and the appellate court's own decision on the evidence. The first appellate court must itself weigh conflicting evidence and draw its own conclusion. (Shantilal M. Ruwala vs R (1957) EA 570). It is not the function of a first appellate court merely to scrutinize the evidence to see if there was some evidence to support the lower court's finding and conclusions. Only then can it decide whether the magistrate's findings should be supported. In doing so, it should make allowance for the fact that the trial court has had the advantage of hearing and seeing the witnesses, see Peters vs Sunday Post [1958]EA 424." This was also set out in the case of Kiilu & Another vs Republic [2005] KLR 174.

Whether the plea was equivocal.

17. The appellant faults the trial court for compositing the two counts he faced and entering a single plea in respect of both counts. The appellant further argues that the plea was unequivocal as he introduced in his mitigation matters that negated the plea of guilty and raised a defence.

18. The respondent argues that the appellant cannot appeal his conviction as he was convicted on his own plea of guilty. Section 348 of the Criminal Procedure Code provides:-

> 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 and legality of the sentence.

19. In Alexander Lukoye Malika vs Republic [2015] eKLR, the Court of Appeal identified the situations in which a conviction based on a plea of guilty can be interfered as follows:-

> A court may only interfere with a situation where an accused person has pleaded guilty to a charge where the plea is imperfect, ambiguous or unfinished such that the trial court erred in treating it as a plea of guilty. Another situation is where an accused person pleaded guilty as a result of mistake or misapprehension of the facts. An appellate court may also interfere where the charge laid against an accused person to which he has pleaded guilty disclosed no offence known to law. Also where upon admitted facts the appellant could not in law have been convicted of the offence charged.

20. The manner of recording plea is provided for in Section 207(1) and (2) of the Criminal Procedure Code which provides:-

> The substance of the charge shall be stated to the accused person by the court, and he shall be asked whether he pleads not guilty, guilty or guilty subject to a plea agreement;
>
> If the accused person admits the truth of the charge otherwise than by a plea agreement his admission shall be recorded as nearly as possible in the words used by him, and the court shall convict him and pass sentence upon or make an order against him, unless there appears to it sufficient cause to the contrary;
>
> Provided that after conviction and before passing sentence or making any order the court may permit or require the complainant to outline to the court the facts upon which the charge is founded.

21. The Court of Appeal in Adan vs republic [1973] EA 445, laid down the steps which should be followed in taking plea as follows:-

a. The charge and all essential ingredients of the offence are explained to the accused in his language or in a language he understands.

b. Where the accused's own words in response to the charge are recorded and amount to admission, leading to a recording of a plea of guilty.

c. The facts are stated by the prosecutor and the accused is given an opportunity to dispute or explain the facts or to add any relevant facts.

d. If the accused does not agree with the facts or raises any question of his guilt his reply is recorded and change of plea entered.

e. If there is no change of plea a conviction is recorded and a statement of the facts relevant to sentence together with the accused's reply are recorded.

22. The record shows that the charge sheet was drafted on 3rd November 2025 and the appellant was charged with the offence of grievous harm contrary to Section 234 of the Penal Code. The charge sheet is signed by the prosecutor at the bottom and stamped by the Office of the Director of Public Prosecutions. The second page of the charge sheet contains count II of the offence of threatening to kill contrary to Section 223(ii) of the Penal Code. The said charge has not been stamped or signed by the prosecutor and it has been crossed over using ink pen. It is therefore, evident that the appellant faced only one count of the offence of grievous harm which was properly endorsed by the officer commanding the station and approved by the Director of Public Prosecution (DPP).The charge was

read to him in a language he said he understood namely Kiswahili and he responded to it in the words: "It is true."

23. The court prosecutor then proceeded to read the facts of the case and the appellant responded: "The facts are correct". The appellant gave his mitigation to the effect that on 24/10/2025 he was told that the complainant was in a bar, that she had fallen down on the mud. Then she told the appellant that she wanted to go for a short call. The appellant went to see her and he found that she had an injury on the forehead. He then took her to the clinic and stitched her. The trial court recorded the appellant's mitigation and the charges he was facing and proceeded to sentence him to five (5) years imprisonment.

24. The plea herein was taken in Kiswahili language which the appellant said he understood. It is not correct for the appellant to say that he did not understand the charge he was facing. However during mitigation, the appellant kind of refuted the particulars of the charge that he caused the injuries to the complainant. He said he found the complainant with injuries when he went to the scene on 23/05/2025. This negated the plea of guilty although it came up at the stage of mitigation. I agree with the appellant that the magistrate ought to have re-read the charge to the accused and confirmed whether he was pleading guilty or not guilty. It was irregular for the learned magistrate to omit to confirm the plea of guilty following the mitigation that clearly denied that the appellant caused the injuries on the complainant. It was the duty of the magistrate to ensure that the plea was unequivocal.

25. On further perusal of the record, I note that the appellant was unrepresented and the trial court failed to take steps to ensure that the appellant understood the charge. The magistrate was under a duty to warn the appellant of the consequences of pleading guilty. This principle was stipulated in Abdallah Mohammed vs Republic [2018] KEHC 5028 (KLR) the court stated:-

> In a case where an accused person who is undefended pleads guilty to a charge, the court has a duty to ensure that the plea is unequivocal. As pointed out, the appellant had no legal representation and the trial court ought to have taken steps to ensure that the appellant understood every element of the charge and the facts read out to him. He also ought to have been warned, and that warning captured on record, that the offence he was about to plead to carried a prison sentence of not less than fifteen years. In my view, extra caution includes the question as to whether or not the facts as read out are true and whether the accused person would wish to make any comment. In fact an accused person should be asked what he means by saying that the charge read to him is true. His explanation should then be captured on the record so as to form part of the plea. From the record, it is apparent that the appellant was just a lad aged 21 years and the trial court ought to have gone the extra mile to ensure he understood the consequences of entering a plea of guilty.

26. The importance of the need for the court to be cautious when accepting a plea of guilty from an undefended accused person was stressed by Joel Ngugi J. (as he then was) in Simon Gitau Kinene vs Republic [2016] eKLR when he stated that:-

> Finally the courts have always held that extra caution needs to be taken in the case of undefended defendants who plead guilty. I have previously held that where an accused person is unrepresented, the duty of the court to ensure the plea of guilty is unequivocal is heightened. In Paulo Malimi Mbusi vs R Kiambu Criminal Appeal No. 8 of 2016 (unreported) this is what I said and I find it relevant here:-
>
> In those cases [where there is an unrepresented accused charged with a serious offence] care should always be taken to see that the accused understands the elements of the offence, especially if the evidence suggests that he has a defence. To put it plainly, then, one may

> add that where an unrepresented accused person pleads guilty to a serious charge which is likely to attract a custodial sentence, the obligation of the court to ensure that the accused person understands the consequences of such plea is heightened. Here, the court took no extra effort to ensure this. In these circumstances, given the seriousness of the charge the court was about to convict and sentence the accused person for it behoved the court to warn the accused person of the consequences of a guilty plea.

27. Similarly in Godfrey Lidaywa vs Republic [2019] KEHC 4451 (KLR) the court held as follows:-

> The main contention by the appellant is that his plea of guilty was never unequivocal and that the consequences of the plea of guilty were not explained to him by the court. It is trite that before a plea of guilty can be entered upon a guilty plea by the accused person, the court must be satisfied that each and every element of the charge is read to the accused in a language which the accused clearly understands. Further the court must explain to the accused person the consequences of the guilty plea so that the accused knows exactly what to expect.

28. The learned magistrate ought to have warned the appellant of the consequences of his plea of guilty considering that the offence he was charged with was serious and attracted a life imprisonment sentence. In the circumstances, it is my considered view that the plea was not unequivocal.

29. Having found that the plea was not unequivocal, the court is tasked with whether or not to order for a retrial. The Court of Appeal in Ahmed Sumar vs Republic [1964] EA 481 at page 483 gave guidelines on what the court may consider in order to consider a retrial. The court stated:-

> It is true that where a conviction is vitiated by a gap in the evidence or other defect for which the prosecution is to blame, the court will not order a retrial. But where a conviction is vitiated by a mistake of the trial court for which the prosecution is not to blame it does not in our view follow that a retrial should be ordered.....In this judgment the court accepted that a retrial should not be ordered unless the Court was of the opinion that on consideration of the admissible or potentially admissible evidence a conviction might result. Each case must depend on the particular facts and circumstances of that case but an order for the retrial should only be made where the interests of justice required it and should not be ordered when it is likely to cause an injustice to an accused person.

30. I have considered the evidence on record. The appellant was charged with a serious offence attracting a penalty of life imprisonment. The appellant has been in prison for only five (5) months having been sentenced on 3rd November 2025. There is no possibility of witnesses being unavailable for a retrial given that the date of the offence was in May 2025 which is less than only one (1) year ago. Given the short period since the offence was committed, it is my considered view that witnesses will readily be available.

31. I am of the considered view that the ends of justice will be served to the victim and also to the accused in the event that a retrial is ordered.

32. Consequently, I find that the magistrate erred by not ensuring that the plea was unequivocal and in failing to warn the accused of the consequences of pleading guilty given the serious nature of the offence.

33. This appeal is, therefore, successful and it is allowed with orders that the criminal case be and is hereby referred to the Chief Magistrate Court for retrial.

34. It is hereby so ordered.

JUDGMENT DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 30TH DAY OF APRIL 2026.

F. MUCHEMI

JUDGE